REFORM IN THE LAW OF ANCIENT LIGHTS.

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I. By J. Fletcher Moulton, Q.C., &c.

IT is by a somewhat curious historical connection that the rights of light and air have come in law phrase to be so closely connected as they are at the present time. The rights are in themselves very distinct, and little gain either in breadth of view or clearness of definition is secured by treating them together. Both light and air are necessaries of life, and both are enjoyed in common by all the world. But there the analogy ceases, and in other and more immediately important particulars the two subject-matters, and the legal questions to which their appropriation for the purposes of human enjoyment gives rise, are strikingly in contrast. Thus light is an immaterial thing, which is absolutely consumed and wholly destroyed in use. No question can arise concerning the disposal of its residuum after use, because it leaves no residuum. The only questions which ever arise with respect to it are questions of free or restricted access. Air, on the other hand, is a fluid body which is corrupted but not physically destroyed in use, and questions touching it are at the present time much more often questions arising out of the disposal of the corrupt residuum or of noxious additions than about the access of the natural air itself.

Nor are the strictly legal aspects of the two subjects less divergent than their physical aspects. In olden times, when wind-mills afforded a widely-used instrumentality for preparing flour, the access of an uninterrupted breeze to the mill was a matter nearly affecting the miller's proprietary interests, and one which raised questions in all respects like those which now arise concerning access of light. But the decay in our country and in our own times of the mechanical industries which depend upon the wind for motive power has relegated this branch of the law concerning the enjoyment of air to a subordinate place; and, on the other hand, the increase of knowledge concerning the important bearing of proper ventilation on the well-being of populous districts has given a significance formerly quite unsuspected to the proper diffusion of air as distinguished from air currents. Now the still, diffusing air is common property in which no private rights grow up, and hence the law relating to the air tends continually more and more to crystallise into regulations having public health as their object—although the recent case of *Aldin* v. *Clark* shows that the rule is not without exceptions—while the law relating to light remains undisturbed upon the foundations of private right,

upon which, as a matter of history, it has been slowly and gradually built up by the industry of jurists and litigants rather than by that of Parliament.

These considerations are not simply of theoretical interest. The effects of the discrepancy here pointed out have been clearly discerned, and their bearing upon the practical work of litigation has been pointed out by that very great lawyer, the late Lord Selborne. He said, in giving judgment in a well-known case:—

"I observe that a formula has crept into the pleadings in cases of this description, and, as the Lord Justice has said, has passed from the pleadings into the evidence, in which air is coupled with light. Now the nature of the case which would have to be made for an injunction by reason of the obstruction of air is *toto cœlo* different from the case which has to be made for an injunction in respect of light. It is only in very rare and special cases, involving danger to health, or at least something very nearly approaching it, that the Court would be justified in interfering on the ground of diminution of air. Therefore, when witnesses say that there is a material diminution of light and air, and say no more, they are in truth reducing the value of their evidence as to light to the standard which must be applied to their evidence as to air, as to which such evidence is of no value whatever."

It is not a little remarkable that the Lord Chancellor in this *dictum* should have wholly passed over the use of air as motive power, which was the ground upon which one of the earliest applications recorded in our law books was made to a court of law for relief in aid of the plaintiff's right to the enjoyment of air. But the omission is easily understood in view of what has been already pointed out with respect to the comparative insignificance at the present time of the wind considered as motive power, or in any other way the subject of private property. That such will continue to be the case it would be very rash to assume, and it may be that, with the progress of invention in the near or distant future, the air may come to have again the same kind of importance in respect of industrial undertakings which it had in the times of James I. If that should happen, the right to access of the breezes may come once more into prominence, and our Courts may then be called upon to develop a new body of law out of a number of precedents which at the present time are among the mustiest of the many musty records in our law reports. Your Institute, however, has a very practical end in view in embarking upon an examination of the law, and adopting measures for its improvement. The considerations to which I have just drawn attention will probably satisfy you that this practical end can best be compassed by separating the law of light entirely from the law of air, and dealing exclusively with the former subject. The nature and effect of private rights to light we understand, and the question of law reform in this respect is one of immediate and pressing importance. We cannot be said at the present time to be in the same position with regard to air. The time, therefore, is not at all propitious for legislating about private rights to air, and the suggestion which I shall venture to put in the fore-front of my address to you is that in any Bill which you may tender to the Legislature you should carefully distinguish between rights to light and air, and limit your proposals to the former subject.

Upon the nature of the right possessed by the owner of ancient lights I do not propose to address you. Your professional studies have made you perfectly familiar with it. I am desirous only to further the practical ends which you have in view, by putting before you in the compass of a short Paper as full a statement as possible of the principal practical reforms which occur to me as called for by the existing state of the law.

In the first place, it seems very desirable to express in a clear and available formula what is the measure of an owner's right in respect of ancient lights. The language of the existing enactment does indeed seem quite clear upon this point. The words of the Prescription Act

are: "When the access and use of light to and for any dwelling-house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible," subject to the well-known exception of the case in which the enjoyment has been sanctioned by the consent of the owner of the servient tenement. These words point distinctly to the right of the dominant tenement being a right to enjoy in future exactly what is shown to have been enjoyed in the past, neither more nor less. And the clause has been so interpreted by Judges of the highest authority, and in accordance with this interpretation it has at times been laid down in the most distinct and peremptory language that the extent of the right does not at all depend upon the extent or nature of the use made of it by the owner. Thus Lord Cranworth says:—

"The right conferred or recognised by the statute is an absolute indefeasible right to the enjoyment of the light without reference to the purpose for which it has been used. Therefore, even if the evidence satisfied me—as it does not—that for the purpose of their present business a strong light is not necessary, and that the plaintiffs will still have sufficient light remaining, I should not think the defendant had established his defence unless he had shown that, for whatever purpose the plaintiffs might wish to employ the light, there would be no material interference with it."

To this proposition Sir George Jessel, when Master of the Rolls, gave his personal adhesion with much emphasis, and pointed out that the principle itself, that rights of this class depend for their extent upon their character, not upon the use actually made of them, was very ancient in our law, having the authority of a case reported by Sir Edward Coke. It is therefore clear upon these authorities that in order to ascertain the light to a continuance of which the owner is entitled, you have only to ascertain the light actually enjoyed during the twenty years' term. Nothing could be simpler or more definite than this rule. But such a rule, if carried out to the letter, would be too oppressive. It has therefore been in practice modified in innumerable cases in a way which originally no doubt was suggested by another rule equally well established, viz. that the law takes no account of trivial grievances. Acting under cover of this doctrine, that the law does not heed trifling invasions of right, the Courts have in practice treated plaintiffs as though they were only entitled to a reasonable enjoyment of light, no matter how complete their enjoyment in fact had been; and this question of reasonable enjoyment of light has shown a tendency to crystallise into a rule that reasonable requirements are satisfied if the owner of the privileged windows gets an uninterrupted view of 45° of sky from the zenith. The suggestion in this form has indeed been put aside by the Court, but still not in such a peremptory manner as to rule it altogether out of order; and thus the question whether the encroachment is to be restrained is a very real and possibly troublesome question even in a case where considerable encroachment may have been actually made. Although the Courts nominally accept the dictum that the right is to the light as previously enjoyed, the existence of decisions upon the principle of 45° of uninterrupted light being adequate show that they do not consistently act upon it. In fact, the two principles are wholly irreconcilable: if reasonableness decides it, history does not measure the right; if history decides it, reasonableness is no matter. Thus, if the decision in *Theed* v. *Debenham* is right, the angle of 45° has nothing to do with the controversy. But our Courts are often practical at the cost of logical consistency, and their behaviour in this respect shows that they have realised the fact that the absolute rule that existing rights shall not be interfered with is too drastic to be adhered to under the needs of a rapidly-increasing town population.

There is another legal pitfall which may be appropriately mentioned here, since it also lends importance to the suggestion that the right itself is susceptible of a more successful

definition than it has yet received. That right is one which may be enforced either by a common law action for damages or by a proceeding in Chancery for an injunction to restrain the wrongful act. But it is the rule of Chancery to have regard in certain cases to the convenience of both parties to the litigation when granting an injunction, and on this principle it has been held that when the mischief is done the Court may, if it considers that course more convenient on the whole, give damages instead of ordering the offending building to be removed. And Vice-Chancellor Page Wood seems to have considered that where a plaintiff could be compensated by an award of damages to the extent of £20, it would be improper for the Court of Equity to interfere by injunction at all. For this purpose, therefore, when, as usually is the case, an injunction is sought, it is necessary to show material injury in order to put the action on its feet at all.

In curious contrast with this last-mentioned rule is a technical rule that when the action is brought to restrain a threatened injury, not to redress an injury actually committed, the Court of Chancery must act by injunction or not at all, for in such a case the alternative power of giving damages does not exist. The whole result is that, although resting upon very simple principles, the law of this matter is curiously involved and intricate. Different considerations apply, and the wrongful act changes its complexion according as one or other of the two remedies given by law for this mischief comes under consideration; and yet in many cases, but not in all, these remedies are alternatives which may be adopted the one or the other at the discretion not of the litigant but of the Court. The remedies are not in all cases alternative to one another, for where the damage is substantial it has been held that you cannot force a plaintiff to accept damages when the wrong is not completely done, but is only a threatened wrong. In that case, if the plaintiff comes immediately for relief, he must obtain it in the form of an injunction.

This is manifestly a case in which the law stands in need of being simplified and rendered more coherent, and yet this can hardly be done by a few words in an Act of Parliament. No mere verbal amendment of existing enactments will suffice. It is not an improved verbal definition that is required, but an improved way of applying the existing definition to the fact, and an improved method of arriving at the facts themselves, and a greater latitude in the choice of remedies.

The difficulty with regard to ancient lights arises from the fact that in the last sixty or seventy years there has been a great change in our national mode of living, in the direction of the accumulation of large populations in towns. This has made the strict rights of light given by the Prescription Act very onerous and often very injurious to the proper development of our towns. Many of you will have had instances in your professional experience in which windows of insignificant size and little importance to the owner have, by reason of their possessing the rights of ancient lights, enabled him to exercise a veto on large and important building plans. It need not be a case in which the erection of the buildings would seriously damage him or deprive him of reasonably sufficient light for the purposes to which such a window could be used. His light must not be interfered with, however great the inconvenience to his neighbour, and however little the injury to him, if it be more than infinitesimal. Too often such a state of things leads to what is nothing less than levying blackmail on the building owner. He must pay what is demanded or abandon his scheme.

If, however, the matter is in the hands of honest and reasonable men, a solution is generally found which is fair to all parties. The owner of the servient tenement takes care that he damages as little as may be, and the owner of the dominant tenement agrees to accept compensation for what is unavoidable. But for this the burden of our law as to light

would long ago have been too grievous to be borne. It is those cases in which the owner of the dominant tenement insists upon his strict rights at the cost of inflicting on his neighbour inconvenience, without any corresponding advantage to himself, which render desirable a change in the law.

Such problems have occurred in connection with other kinds of property than rights of light. Private property in land was absolute in olden times, but when railways came to be made it was seen that the community could not allow an individual to hold at his mercy projected works of great public advantage merely because their execution required land owned by him. It solved the difficulty in a very practical way, which amounted to saying that if he would not act reasonably he would be required to sell his land at the price that a reasonable man would take for it. In other words, the Legislature by statute obliged the recalcitrant owner to do that which an honest and reasonable man would do of himself—viz. part with his rights at a fair valuation without taking advantage of the needs of those who required the land for the purposes of the intended works.

It is my opinion that the only method of satisfactorily solving the difficulties arising from rights of light will be to follow a similar principle. It is true that in the case of the compulsory acquisition of land Parliamentary sanction is to be obtained; but this is far too cumbersome and expensive a remedy to be applicable in the case of ancient lights. The remedy must be capable of being applied without the cumbersome machinery of special legislation; and I think that this can be done without injustice to the individual by empowering our Courts, when they have to deal with rights of this kind, to imitate in their remedies the conduct which honest and reasonable men would exercise in their own affairs. I have pointed out that in such cases I would consider how the ends might be obtained with least inconvenience. Next, they would consider the question whether the compensation for that inconvenience, which the one would justly require, would be greater than the other could profitably bear, and the solution arrived at would depend upon the answer to this question. I see no reason why, in case of controversy, our Courts, especially if strengthened for the purpose by technical assistance, could not solve difficulties in a similar manner.

To effect this end, you must put an end to any technical rule that prevents damages being given for an injury of this kind, whether actual or threatened. In my opinion, you would run no risk of doing mischief if you conferred upon the High Court the fullest discretionary power, in every case where an injunction to restrain the darkening of ancient lights can be granted, to substitute for the injunction a money payment by way of damages. This might be done if necessary in substitution of a part only of the relief granted, so that, if the merits of the case demanded it, the Court might authorise a definite encroachment upon equitable terms, while at the same time restraining some further threatened encroachment by an injunction.

A case of this sort can easily be imagined. An important building may be in contemplation which, overtopping the building that formerly occupied the same site, must of necessity darken ancient lights. It may be perfectly unreasonable to prevent the carrying out of the building scheme, and yet perfectly reasonable to say that a certain chimney stack, for example, which aggravates the nuisance, ought to be accommodated elsewhere. On the principles I advocate, the Courts, in a matter of such practical importance, should be able to avail themselves to the full of the remedies by which sensible men in practice mitigate the difficulties of conflicting rights and interests. In such a case as the one I have described an element of the settlement in a case by compromise would probably be in practice an arrangement that white tiles, for example, should be used to minimise the loss of light. I see no objection upon any

ground of legal principle why the Court should not be free to consider such proposals and deal with such a case in the following manner: Issue an injunction to restrain the building of the chimney-stack; award damages in respect of the remaining encroachment; allow by way of abatement from the damages such sum as may fairly represent ameliorations brought about by the use of reflecting bricks, tiles, or the like, tending to minimise the inconvenience, upon a proper undertaking to maintain the white bricks in the form of a contract binding on the land.

It is evident that it would be advisable to strengthen the Courts by technical assistance in cases of this kind, but this is not a proceeding strange to our existing judicial system. For example, in the Admiralty Court the Trinity Masters sit in order to give the guidance which their practical acquaintance with seamanship enables them to give to the Judge. An architect-assessor sitting with the Judge would be amply sufficient to enable the Judge to deal with questions of this kind. I do not for a moment suggest that it should be an object of the Court to suggest to the litigants the various modifications or ameliorations which should be adopted in order to minimise inconvenience. It would be for the litigant to propose these, and for the Judge, aided by his assessor, to decide whether they brought the case into the category of those in which a great balance of convenience would be gained by authorising a modification of the strict rights of light of one of the parties, giving him full and fair compensation for any loss caused to him thereby. And there is one reason why I think that it is essential in legislation of this kind to have the technical element present to assist the Court. A Judge has naturally a tendency to lean to those remedies which are purely matters of law, on which he is an expert, rather than to those which combine principles of law with practical questions. He feels himself less a master of the practical considerations than of the legal ones. It is to this that we must attribute the comparative failure in practice of Lord Cairns's Act, which I think was intended to initiate the system of freely dealing with matters of this kind by way of damages rather than of injunction. The timidity of Judges in adopting a remedy which did not follow the lines of the strict rights of the parties caused this useful legislation to be applied only to cases where the damage was all but infinitesimal. A technical assessor, however, would enable the Court to feel itself possessed of the requisite practical experience, and would, I am sure, lead to a much bolder and wider adoption of the new remedies.

Before I conclude I must deal with the question of the acquisition of rights of light; and this point comes in appositely at this moment, because I think that the Court might with great advantage impose as one of the terms upon which a building was permitted that the windows thus erected should not acquire rights of light against the other litigant's property, or should only acquire them in a modified degree. This would enable the Court to avoid the occurrence of what is often a great injustice—namely, that when buildings are erected the surrounding property may in process of time become servient to rights of light acquired to them without the owner of that property being in any way able to prevent it. For instance, a building with a small and insignificant window may be by rebuilding changed into a large building with many windows, none of which can, in practice, be blocked up without interfering with the ancient lights derived from the original window. In process of time these become ancient lights, and thus extend the servitude of the surrounding property. This is, to my mind, a great injustice, and it arises from the fact that the actual enjoyment of light is considered to be due to the acquiescence of the owners of the surrounding land, whereas it may be that they have never acquiesced at all, but have simply been unable to prevent it. And even when they are able to stop the acquisition of rights of light it is

only with the barbarous method of blocking out the light with an unsightly and inconvenient erection which does no good to any human being, and necessarily destroys, and is intended to destroy, comfort which might otherwise be enjoyed. I see no reason why we should adhere to such barbarous methods. I would substitute for them a notice which might be given by the owner of any land to the owner of windows, which would otherwise acquire rights of light over the land and limit his power of utilising it. But such notices should not be private matters requiring proof by evidence, otherwise they would lead to needless litigation as to what passed many years before. They should be of no effect unless duly entered in registers kept for the purpose and accessible to the public. In this way much of the difficulty with regard to rights of light would be removed, for people would not so strongly object to their neighbours developing their property by building if they knew they would not by so doing hinder them in turn from developing their property in a similar way.

I have pointed out very shortly the lines in which I think legislation should go in order to diminish the inconvenience arising from the existing rules as to rights of light. The matter may be briefly expressed as follows:—

The Court ought to be fully empowered to consider each case on its merits, and to decide according to the balance of general convenience whether interference with existing rights of light should be prevented or should be permitted, and on what terms. Those terms should be based on the consideration of what honest and reasonable men with practical knowledge would arrive at as a proper solution if the case were to be settled outside the Courts instead of inside, and in all cases the owner of rights must receive fair and adequate compensation for any modification of his rights to which he is required to assent.

II. By J. Douglass Mathews [*F.*].

AFTER the valuable Paper by the learned and eminent Queen's Counsel which we have just heard it would ill become me if I said a word on the legal aspect of the subject before us, and I shall therefore confine my remarks to the difficulties which most architects, and especially those practising in London and large towns, have to experience in erecting or altering a building dominated by ancient lights, and the unsatisfactory methods now adopted to settle differences, with an endeavour to further a scheme which would be more simple, expeditious, and economical than the present cumbersome machinery.

When a client consults an architect he expects him to advise not only on the general design of a building but also upon the possibility of its being carried out, which includes not only construction but also compliance with rules and regulations applying to buildings and other matters which an architect ought to know. With proper education and experience there should be no great difficulty in this, and in the ordinary way the work is carried out in accordance with the original design. If, however, the building is to be erected in a city or large town, in addition to the foregoing requirements he must take care to so design his building as not *materially* to interfere with rights possessed by neighbouring persons in respect of light and air.

I emphasise the word *materially*, as upon it depends most of the difficulties that architects have to encounter, and, having a wide meaning, it is not surprising that differences of opinion should arise between the architect and the possessor of an ancient light. If certain

simple rules could be laid down, such as that no erection take place above a line drawn at an angle of forty-five degrees from the horizon from the sill of an existing window, or within certain angles laterally, or other methods which have from time to time been advocated, there would be no greater difficulty in complying with them than with Building Acts or sanitary by-laws. But the law as to ancient lights is not so codified, and therefore there is much room for uncertainty.

An architect may have made himself acquainted with all the leading cases and decisions affecting ancient lights, and may do his utmost to keep his client free from litigation, yet he may find himself out of his reckoning by some slight interference to a window to which he attached little importance, but which might prove to be of great value to its possessor, and so bring about a lawsuit and possibly a curtailment of, or alteration in, the new building should the opinion of the Judge be adverse to that of the architect. A great deal depends upon the dispositions and tempers of the owners of dominant lights. If they should prove reasonable, a building might be carried out without difficulties arising, whereas if the reverse were the case troubles of all kinds might ensue. Thus a building might be erected in one place, whereas in another, the circumstances being all identically the same, it might have to be materially reduced in height and accommodation. For the purposes of illustration I will assume a building is to be erected on a site environed by ancient lights, and the architect, having carefully studied their position in relation to his building, has done what he could to prevent material damage to them.

As soon as building operations are commenced he is deluged with letters and notices threatening proceedings in case of interference with ancient lights. He makes it his business to interview the possessors of these windows, and it is not unlikely that he will hear such remarks as the following:—

A thinks his light may be somewhat interfered with, but, as he does not wish to be unneighbourly, will not prevent his friend from utilising his property to the best advantage.

B, although there may be some interference in one direction, it is compensated for by additional light in another, and therefore he will be satisfied with the exchange.

C does not like the proposed new building, but yet if his windows are enlarged and the new buildings faced with white glazed bricks, and other improvements made, he will be content.

D has no doubt that what is proposed will diminish his light, but, as he intends rebuilding, he will not object, on the condition that he is allowed to carry his building to a height equal to the new one.

E has no desire to be unfriendly, and all he asks for is that no interference may take place in the light he has previously had.

F is fully determined that if the new building is carried one inch higher than the original one he will apply for an injunction.

G is not going into the question of material damage, but does not see why the owner of the new building should have any advantage over him, and therefore, if he wants anything he must pay handsomely for it, or otherwise he will see what the law can do for him.

H, that his business is one which requires an exceptional light, and that was the reason of his taking his premises, and any interruption would ruin his premises, as he is bound to be in the particular locality.

Now what takes place? First, arrangements have to be made with those who are willing to come to terms. This generally takes some time, and heavy fees have to be paid. One of the other objectors at once instructs his solicitor to obtain the best evidence he can on his behalf. Surveyors are called in to make measurements; elaborate drawings are prepared,

reports made and affidavits sworn, eminent counsel briefed, and the case taken into court. It is very probable that on some technical point an adjournment takes place, and possibly eventually the case is settled out of court, either by compensation or by the alteration of the building.

When the work is progressing it is not unlikely that the objector, who is determined to make something out of the job, after trying to extort an exorbitant sum, fails in his attempt, and in due course he applies for and obtains an interim injunction, but before the case is argued withdraws his action on payment of his full costs. The difficulties may even then not be over. The plausible neighbour who desires to have what he formerly had has been waiting until the building is erected and the scaffold removed, in order that he may see whether such is the case, and is now of opinion that his light has been interfered with. Having previously taken care to give an admonitory notice, he now proceeds to apply for a mandatory injunction, and if he is successful the building must be altered as directed by the Court. This, of course, is a serious and expensive matter both in time and money, and it not unfrequently happens that instead of altering the building heavy compensation is paid, together with correspondingly high costs.

I will take another case. It is not an unknown occurrence for a building owner, finding himself hampered by ancient lights, to determine to run all risks. He therefore makes it known that he is prepared to spend any amount of money in law, and that he will fight every claim, and, moreover, that if his buildings are stopped by law proceedings, in case of failure his opponents will have to pay heavy damages and expenses. This course of procedure will act as a deterrent to timid and nervous persons, and also to those (and perhaps they are the greatest sufferers) who cannot spare either the time or the money to fight a lawsuit. Other owners with unquestionable rights have to incur the costs of a heavily fought case, which under the most favourable circumstances will amount to a considerable sum out of their own pockets, in order to maintain their rights. Thus by this high-handed proceeding those who insist upon their rights are put to much inconvenience and expense, whilst others have to sacrifice what unquestionably belongs to them.

There is yet another side. A building owner without any previous warning finds his building suddenly stopped at a critical stage by an interim injunction; and if this happens in the Long Vacation it is not uncommon for an arrangement to be entered into that if at the trial an interference with light is proved the building has to be taken down, and in many cases this has been carried out with almost ruinous expenses.

The Prescription Act, 2 & 3 William IV. c. 71, enacts that where the access of light to any buildings shall have been actually enjoyed for twenty years without interruption, the right thereto shall be deemed absolute and indefeasible. The advantages thus conferred are valuable, and in some cases the light is of vital importance to the possessor for the proper carrying on of his business. The law may be clear, though not so its interpretation, and therefore every case has to be considered on its merits. My experience is that there is scarcely a case that is exactly a counterpart of a decided one. It is, therefore, eventually necessary to have to apply for a decision to one of Her Majesty's Judges, and there is probably no subject that comes before him which is more ambiguous and unsatisfactory, on account of the direct contradictory assertions made by both sides of facts and opinions, for which I am bound to say that architects and surveyors are to a great extent responsible. The system at present adopted tends to mystify and to worry the Judge. Long affidavits and counter-affidavits have to be waded through and compared with drawings often made to a very large scale on separate sheets of tracing cloth, which, when being referred to, occupy a considerable space on both Judge's and counsel's desks. Possibly still further inconvenience is caused by

the presence of a large model, which is brought in by workmen and put together in Court and lodged in some inconvenient place. A quarter of an hour, it may be, is consumed in doing all this, generally with little advantage, as most people know that in looking down upon a model it cannot convey a correct idea of the building and its surroundings. Counsel also, and that too with the best desire to assist the Judge, sometimes still further fog him. And yet amidst all this he is expected to make himself as well acquainted with all the circumstances as if he had himself viewed the site, and could appreciate the fine distinctions that the surveyors had arrived at after minute study. Added to this he has to hear counsel's arguments and precedents and contentions as to whether this case is on all fours with some reported one. All this possibly does not occupy more than two or three hours.

With all these difficulties is it surprising that decisions are not so clear as to interpret the law definitely, so that an architect may not be uncertain as to what he may or may not do in designing his building? If, instead of the usual proceedings, both parties were to agree upon the facts, and then to state a case to the Judge, as is sometimes done, it would in most instances be easy for him to arrive at a decision, and that too at a saving of both time and much money.

I have now endeavoured to show that the application of the present law is fraught with difficulties and uncertainties, and that its interpretation is so expensive and dilatory that rights are oftentimes surrendered which ought to have been maintained. As matters now stand an unscrupulous person has an opportunity of preventing his neighbours from using his property to the best advantage, except by payment of some compensation (oftentimes blackmail), and the law affords us no means otherwise than by mutual agreement to alter old lights in a way that may be beneficial alike to the owner of the dominant light and to the person erecting his new building.

Nearly seventy years have passed since the Prescription Act became law, during which time great changes have taken place in building. Many villages have become towns, many small towns have become large cities, and many cities have ceased to be places of residence, and are now centres of trade and business, so that that which was a reasonable law then has become an arbitrary one now, and interferes with the fair use of valuable property. It is not then unreasonable to ask that this may have the consideration of our legislators, and that an alteration in the present law may be made or a new Act passed. In such an Act, whilst carefully guarding the rights of ancient lights, which are in many cases of incalculable value to their possessors, I would submit that they should be treated more in the nature of easements, and, provided that an equivalent is given, that the particular merits of the case may be taken into account rather than the hard-and-fast rules of law.

Now can anything be done to lessen the present evils and to simplify the mode of procedure in dealing with ancient lights, a question that must arise from time to time in crowded cities and towns?

This matter has for a considerable time occupied the attention of the Institute. So long ago as 1881 Professor Roger Smith opened a discussion on the rights of ancient lights, and made several valuable suggestions with a view to make the law more clear, and proposed a resolution "requesting the Council to enquire into the question of the Law of Light and Air as it affects buildings, and to make such practical suggestions with respect thereto as may seem expedient," which was carried.

A Committee appears to have been formed, and the opinions of many members, both lawyers and architects, were sought and obtained, and a very interesting digest was prepared by Mr. Smith and published in the PROCEEDINGS for March 1888. The work of this Com-

mittee was handed over to the Science Standing Committee, and the general feeling was that a simpler method of dealing with interference with lights than at present exists called for immediate attention. Professor Roger Smith and the writer of this Paper prepared certain proposals which, after much deliberation by the Committee, were embodied in a report to the Council in May 1890. Nothing was heard of this report until it was presented to the members by Mr. Lewis Angell, the Chairman of the Science Committee, in February 1893, in practically the same form as it was sent to the Council. This seems to suggest either that that body had not dealt with it, or else were so satisfied that they desired the Committee to bring it before the members, or I would rather say that by a free discussion on the report they might be aided in taking steps to obtain an alteration in the law. I will not trouble you with the report in detail, but it would be well that it be printed as an appendix to the Papers read this evening [see p. 231].

The outline, however, is as follows: That before the erection of a new building, or alterations to an old one, any owner or occupier who may consider his ancient lights likely to be interfered with may inspect the drawings and obtain all particulars as to what is proposed. That if any such owner or occupier considers his rights will be injured he shall give notice of objections to the building owner, together with the name of a surveyor who will act on his behalf. That on receipt of such notice the building owner shall nominate his surveyor, and that such two surveyors shall meet within seven days, and in case of disagreement shall refer all matters in dispute to an umpire, who shall make an award and shall determine all or any of the following: viz. the right to carry out the intended works; the alteration, if any, necessary to be made to prevent or lessen obstructions; the amount, if any, of compensation to be made; the alterations or improvements to adjoining premises by light-reflecting surface or other means; the amount of costs to be paid by either party, and generally all matters required to arrive at a settlement.

That in case of failure in appointing an umpire the President of the Royal Institute of British Architects shall appoint one.

That in case of either party refusing to accept the award an appeal may be made to a tribunal composed of experts (architects, surveyors, and barristers), who shall decide whether the award is sound and equitable, and shall modify it if necessary. They shall also have full power to determine the way in which the new building or alterations shall be carried out. In the case, however, of compensation being awarded and the amount not meeting with the approval of either party an appeal may be made to the High Court, except in cases where the sum awarded does not exceed £20, and provided that the party appealing shall give a proper undertaking to pay the costs and expenses.

That after the passing of the Act any owner not at the time servient to some neighbouring tenement which in time would obtain dominant rights may advertise the same in the daily papers, and that such notice shall have the same effect as though an interruption had been submitted to for one year immediately previous to the date of the service of such notice.

That no building after a certain date shall acquire the right of light over neighbouring property.

In the discussion which followed the reading of the report differences of opinion were expressed in reference to the two last clauses, which deal with the termination of the rights of ancient lights, and upon this subject doubtless my friend Mr. Beresford Pite will soon address you. There were also many matters of detail touched upon, and in the end the principle of the report was generally approved, but it was referred back to the Science Com-

mittee for reconsideration of the details. This appears to have been done, as a report presented to the Council is printed in the JOURNAL of March 1894, which recommends that the Council should ask the London County Council to include in the Building Act Amendment Bill clauses dealing with the question of light and air, which include a notice to be given to owners of adjacent properties by the building owner before increasing the height of the former buildings, and that drawings should accompany the notice showing the proposals for the new buildings, and in the notice the name of the surveyor should be included. Other clauses deal with the settlement by the same method as that provided in the Act relating to party walls. In case either party refuses to accept the award made by two of the three surveyors an appeal may be made within a month to one of the official referees, who shall sit with a professional assessor to be appointed by the President of the Local Government Board or the Home Secretary, unless both parties agree on an assessor within seven days. The decision of the official referee shall be final, the costs to be in his discretion. It also includes the clauses in the former report preventing any rights accruing in future.

Whether or not this was laid before the County Council I do not know,* but at any rate no such clauses are to be found in the London Building Act 1894. I venture to think that the suggestions would not have been found to work well, as the method of settlement by two or three surveyors would not adapt itself to matters where the differences of opinion are generally so great that it would be almost impossible for two of the surveyors to agree. The matters at issue would be of too much importance to leave in the hands of an official referee without power of appeal. Moreover any alteration in the law must apply to the whole country, and not be confined to any city or town which might desire a certain procedure.

No further action appears since this report was presented, and I trust that by requesting the Practice Committee to occupy the attention of the members this evening the Council intend to take speedy action with a view to the amendment of the law.

From a perusal of the many suggestions made in the before-mentioned reports and discussions I am of opinion that the reports presented by the Science Committee in 1893 will be found practicable with certain alterations and conditions, one of which should be that before a building is taken down or any alteration is made in an old one it must be measured, and plans, elevations, and sections drawn, which should be verified and certified by the district surveyor in London, or by the borough or other public surveyor elsewhere; and that such drawings should be available for inspection by interested parties on payment of a small fee. By this means no doubts would arise as to the extent and height of the original building.

In the event of an Act of Parliament being obtained in the terms before mentioned the following advantages would be ensured:—

1. Reliable facts as to the former buildings would be ascertained and tabulated.

2. The building owner would of necessity have to make known his intentions, so that interested persons could ascertain if their rights would be interfered with.

3. By the employment of an architect or surveyor appointed by each party the facts could be calmly discussed, and by this means one half the differences would be settled.

4. When, however, such were not the case, the umpire, after hearing both sides and having viewed the premises, would form his own opinion, and when his award was delivered it would undoubtedly be carefully considered before further steps were taken by either side.

5. The appeal to a tribunal of recognised experts, composed of not less than three

* In the annual report of the Science Committee for 1894 it is stated that a copy of the Report on Light and Air was forwarded to the London County Council on the 27th March 1894.—ED.

persons, would afford an opportunity of hearing evidence assisted by counsel, the procedure being similar to that of an action in the High Court of Justice.

6. The tribunal having all facts before them, as also the opportunity of viewing the premises, their decision in all matters of dispute should be regarded as final, but with one important exception, however, viz. that the discontented party should still have the right of an action in the High Court for damages, if he considers that he has suffered loss either of his rights or amount of the compensation by the action of the tribunal of appeal.

The advantages above claimed would, I submit, be (1) expedition in the settlement of differences; (2) great saving in expense; (3) fairness and equity to dominant and servient owners alike, and (4) abolishment of the risks and expenses incurred in stopping the progress of works, and in altering or pulling down buildings when erected.

If these suggestions should find favour with this Meeting I hope that the Council will endeavour to obtain an alteration in the law, and as the subject has occupied the attention of the Institute for nearly twenty years, and the opinions of members at that time were much the same as those of present members, nothing can be gained by further delay.

As the Surveyors' Institution is as much interested in the subject as this Institute the co-operation of that body should be requested, so that steps may be taken to draft a Bill.

I thank you for the attention you have given to these remarks, and hope that the difficulties and anxieties which architects and their clients now suffer may ere long be reduced if not dispelled.

III. By Beresford Pite [*F.*].

I PROPOSE to consider—First, the existing statutory restrictions on the height of buildings. Secondly, the private restriction for the protection of prescriptive rights of light. Thirdly, the exceptions and waivers to this private right of restriction. Fourthly, alternative suggestions for Statutory Reform, together with the Report of the Science Committee of the Institute in 1893. And, lastly, to offer two suggestions for reform without recourse to legislation.

I. STATUTORY RESTRICTIONS ON HEIGHT OF BUILDINGS.

The height of new buildings is restricted in London by statute, and also generally in towns throughout England either by statute or by local enactment.

The London Building Act of 1894 provides in Section 15 for the preservation of a width of 40 feet in all streets, but permits the re-erection of formerly existing buildings to their original extent upon their old line and frontage, and provides that no dwelling-house for working classes shall be erected or re-erected to a greater height than the distance from the opposite side of the street.

Section 41 of the Act regulates the height of domestic buildings in relation to open space required in the rear, by the operation of an imaginary diagonal line drawn from a point at the rear of the site, which may be raised 16 feet above the street level in streets laid out previous to the Act, at an angle of 63½ degrees. This secures that at any point between the opposite back walls of houses having a common boundary the access of light and air is secured above an angle of about 45 degrees.

Section 47 limits, with the exception of churches and chapels, the height of every building

to 80 feet, exclusive of two stories in the roof and of ornamental towers and other similar features; and also excepts the rebuilding of any building to its former height which exceeded 80 feet at the passing of the Act.

The London County Council have power to make exception to these provisions as to heights.

Section 48 enacts that no consent of the Council shall be acted upon until an opportunity for appeal has been afforded to the owner or lessee of any building or land, within 100 yards of the site, who may deem himself aggrieved by the grant of such consent.

There is a further important regulation in Section 49 to the effect that no existing building, excepting again churches and chapels, on the side of a street laid out after August 7, 1862 (the date of the Metropolis Management Amendment Act), and of less width than 50 feet, shall, without consent, be erected to a height exceeding the distance of its external wall from the opposite side of the street.

Disregarding the exceptions of the re-erection of pre-existing buildings, places of worship, working-class dwellings erected by local authority, the raising to a proper height of existing attic dwelling rooms, and other similar cases, we have therefore the following restrictions:

1. A general regulation of the height of the back of houses to ensure an angle of about 45 degrees of light.

2. An extreme limit of 80 feet in height in all buildings.

3. In streets laid out subsequent to 1862, of a less width than 50 feet, a restriction of height to width ensuring an angle of 45 degrees of light; and

4. A right of appeal granted to owners within 100 yards distance against any consent to exceptions to these limits granted by the London County Council.

Such legal regulations as these were passed in the general interest of the whole community, and are in their nature sanitary rather than architectural, and their motive is not the desire for symmetry or uniformity of effect. To this, the wise latitude allowed for architectural features—towers, turrets, roofs, dormers, and other addenda—bears witness, as well as the regulations permitting a somewhat free treatment of sites at the corners of streets of varying widths.

The London Building Act of 1894 thus applies to the backs of houses the regulating angle of height first applied to their fronts by the Metropolis Management Amendment Act of 1862, namely, that of 45 degrees from the base. The exceptions that occur accommodate existing vested interests, and evade the opposition to which, being a Private Bill, the proposals would have been exposed if the conversion of old streets into new ones, by the application of rules of height based on modern ideas of sanitary requirements, had been attempted. The extended application of a regulation of height by the angle of 45 degrees, which it is so often asserted has no power as a rule of law, however, gains increased value as evidence of what the Legislature consider to be an essential quantity of light and air from a sanitary standpoint.

There can be little doubt as to the general usefulness and wisdom of these regulations. Buildings of extravagant and Babelonian height are not in great demand at home, and the few examples that we have, principally in Westminster, have not evidently commended themselves to the building community. Such blocks as Queen Anne's Mansions are only tolerable on account of the respectability and hospitality of their tenants; but the mind recoils from the thought of the condition of so lofty a block with slum tenants, supposing, as so often occurs, that the centre of social gravity shifts, as it did once from Theobald's Row and Soho, westwards.

We are not without witness of the unsuitability of lofty blocks for the dwellings of the

poorer classes. A sanitary inspector in East London once illustrated this to me by reference to a lofty block of tenements, about seven floors in height, in which the most disreputable and the least cleanly of the tenants had gradually shifted upwards, the rents being cheaper, as the topmost floors were not so readily let, and visitation and inspection by charitable and official agents involved more labour. These upper floors gradually became untidy pandemoniums, an upper world of uncleanness that would not have been so possible at a lower and more general level.

There is also the serious objection that such lofty blocks, when placed near to one another, darken their lower stories, making them gloomy and depressing.

The demand for increased accommodation on central, and consequently valuable Metropolitan sites for a large resident population, however, is a real one, and the practical remedy of cheap and rapid transit to suburban districts by electric tramways, though not coming directly into the scope of our subject, removes a considerable class of buildings from the field of action of light and air litigants.

The existing statutory regulation of height, it may be remarked, is permissive of any height within the limit, and, therefore, not likely to produce lifeless uniformity of skyline.

The risk of dangers in lofty dwelling blocks from defects or failure in construction, from accidental fires, or from an invasion of highly infectious disease, is proportionately much greater than in buildings of restricted height.

It is not, perhaps, too much to say that the public at large as well as the architectural profession welcome such regulations, which make, on the whole, for the general benefit of the people.

It may here be well to remind ourselves that such restrictions are the modern products of legislation, and invade the ancient liberty of the subject to do what he will with his own, and that values of sites, as existing when the more recent Acts were initiated, can be supposed, and therefore asserted, to have been affected and reduced by their provisions, though it is not probable that this has been the case to any serious extent.

The tendency of modern legislation has been to limit the freedom of building owners, but it has left the freedom of adjoining owners to interfere, unmeddled with, and the building owner, therefore, has two opponents instead of one. With restriction of height might there not have been secured absolute permission to build up to that height?

It is therefore impossible to build to an unlimited height; the legal limit being accurately defined and the application of the law fairly clear; and statutory regulations in the interests of the light, air, and health of the community are without difficulty accepted on either hand.

II. PRIVATE RESTRICTION FOR PROTECTION OF RIGHTS OF LIGHT.

We now have to consider the further restrictions of the height of buildings which are not statutory and which are not exercised on behalf of the general sanitary interests of the community. They are the private, and might almost be called personal, rights to preservation of access of light, when once conferred by prescription, over the land and buildings of adjoining neighbours.

This private and personal right, when once acquired, is indefeasible, and is superior to and refuses at its will the permission granted by the statutory law; the limited height granted in the just and mutual interests of the community being restrained and denied by the prescriptive right of the individual, which is also by nature sufficiently uncertain and indefinite to render its application obnoxious and often a considerable hardship.

The right to prevent the erection of buildings beyond their pre-existing height, opposite to or within sight of a window or light, that can prove the existence of the *status quo ante* for twenty years, is a living, active, growing potentiality. Powerless for restraint, indeed, and invalid for the first nineteen years of the existence of its light, but, so soon as it comes prematurely of age at twenty years, capable of the exercise of such selfish vices as are inherent in the human nature that looks through it. Innocent and perhaps beautiful windows around our dwellings and lands, that we unselfishly permit to enjoy the view of our tasteful gardens and forecourts, are slowly but steadily acquiring a prescription that, like Circe's draught, changes their human nature. In acquiring the dignity of "ancient" they become engines of terror. Once, in the days of their adolescence, they derived with gratefulness sunshine and landscape by means of your restraint and favour, accepting them with humility and thanks; but, having become "ancient," the grace becomes a debt, the humble recipient of favour becomes a dominant owner, and you have in your nearest neighbour a remorseless tyrant, who may prove a veritable Shylock.

The steady but unobserved growth of lights to the prescriptive authority which enables them to restrict building, is not the only peculiarity that renders them uncertain and difficult to deal with. Their effectiveness in action, and the extent of their power to restrain, may depend upon a private and particular use made of the window by its owner for the time being, of which you can form no idea by external observation. Should the light be used for wool-sorting, engraving, or watchmaking, the power of restraint that it exercises is greatly increased over that of more normal purposes; but it were a vain delusion to suppose that if a window lights only an insignificant cellar or ventilates a bedroom it possesses little or no restrictive energy. The practical impossibility of estimating from external observation the fighting potentialities of a mere window makes the application of any recognised limit of concession wellnigh useless.

In effect, then, this private right of dominance and restriction has become seriously oppressive to the holders of property. It is scarcely too much to say that its acquisition is surreptitious, as it procures from a neighbour property of great possible value to him without consideration or consent. A leading provincial member of this Institute, of great experience in these matters, has said: "The obtaining of an easement by prescription is, in my opinion, a simple piece of dishonesty; but still it is the law." It is also correctly described as "a vested interest in your neighbour's property," and is suggestive of a dim survival of a Feudal tyranny. Adding to this surreptitiously acquired right the capricious nature of its use and application, we have stated the existence of a sufficient grievance to justify the consideration of any possibility of relief.

It would be easy to add picturesque descriptions of the anomalies which arise in the application of the art and mystery of "ancient lights" in everyday practice. How abstention from the exercise of your freedom to build in your own time, on your own land, or to complete and add to your house, brings about the ceasing of your right to build at all; procrastination becoming the thief of right as well as of time. How no skill or effort is required by the benefited, in obtaining this extraordinary power of control—the simple method of sitting still, looking on, and saying nothing, being all that is needed; how this unreciprocal mutuality becomes merely robbery by patience; and how the uncertain and temporary continuance of a special use of a window in one man's property, controls the permanent erection of a normal building on another man's.

With the many aids to restriction created by the practice of the law, and the ingenuity of surveyors, we are rapidly coming to regard the heights of an old building as obligatory as

the horizontal dimensions of its boundaries. It is scarcely safe in any case to assume the feasibility of an additional story of increased elevation. The operation of the law of prescription on rights of light must of necessity in any crowded city stereotype existing heights, and in the course of time make it obvious that expansion is impossible and general public improvement restricted. We have admitted the communal desirability of sanitary regulation in building heights, and now discuss only this prescriptive right of restraint which is personal and selfish. No common or public interests are furthered by it, and from the point of view of civil architects we cannot but regard its existence and operation as retrograde and inimical to municipal improvement, and unworthy of retention in an enlightened country.

The use that is made of claims for rights of light for delaying building operations, in order to extract heavy compensation from the owner, has become a serious abuse. The rule seems to apply, that the amount of compensation should bear relation to the cost of delay to the building owner, and not to the use and value of the light to the claimant. It therefore frequently occurs that a seldom-used window in a lower story, perhaps to some cellar or basement store, acquires an unlimited fictitious value, if it is in a position to control, by delaying until a trial in court can take place, any part of an important new building. The ethics of these proceedings are those of highwaymen in the last century, and are now generally applied with a similar gentlemanliness and persuasiveness of business tact. But "blackmail" succinctly describes both operations. The sufferer sighs for instant appeal to the Courts of Justice; and the expense of access to them, where the injustice of the proposed imposition could be demonstrated on trial, would be cheerfully borne, for it is nothing compared to the loss that would be entailed by the many months' delay with which he is threatened. But the law, which is swift to delay by injunction, is slow to quicken by judgment, and the tyrant is enabled to enforce his often inordinate claim, without its justice coming for one instant under review.

The two grounds which we have thus stated, of the stereotyping of existing heights in all their inequalities and unmeaningness by private lights, and of the growth of the practice of making heavy claims, which are met through the fear of the delay caused, and not upon the intrinsic value of the light claimed to be damaged, will justify us in urging that reform of the law and procedure is desirable.

III. EXCEPTIONS AND WAIVERS TO THE RIGHT TO RESTRAIN.

It would be difficult to discuss the equitableness of the complete abolition of the power to restrict by private owners, if we had not instances and experience of the effect of such a condition by waiver or covenant upon buildings and property. Taking for granted that the existing statutory regulation of heights is maintained, we remove at once from discussion most of the possibilities of extreme obstruction to ancient lights, as we have reasonable limits both of front and back elevation settled in the general interest.

The case of lights not yet ancient seems much to the point we have in view. For nineteen years of its existence, in a new district, or street, or building, a light has no power to restrict another man's building; it is difficult to sympathise with so newborn a grievance, after nineteen years of non-complaint and peace; what vital change comes over the case on the threshold of the twentieth year of its soulless existence?

The settled decision that ancient lights have no restrictive rights over Crown estates and tenants, affects a large number of important London streets; and though arrived at by different methods, tenants on many London ducal and other large estates are

prevented by covenant from acquiring easements over adjoining properties on the same estate.

The right to protect your property against an impending easement by the temporary erecting of an obstruction upon your premises, necessitating a fresh start in the process of acquisition, appears to have a technical quality which indicates that the value of the antiquity thus prevented is similarly technical.

There are also cases—they were formerly more numerous than now—where possible right to restrain is not exercised, and is foregone, either through ignorance of the possibilities of a claim or through a natural acquiescence in a neighbour's obvious right to build to a moderate or similar extent to oneself.

We, however, can consider as exceptions to the right to restrain, the large number of claims in which the receipt of a sum of money makes up for a loss of light, as it does for love in breach of promise of marriage actions; and we might express the disappointed hope in a parenthesis, that the eminent late Lord Chancellor who had at one time the intention of seeking to abolish the latter cause of action, might have seen his way logically to deal with light as well as love. To refrain from exercising a legal right to restrain a neighbour from building on his own land for a money consideration, reduces to a practical basis much that would otherwise be speculative: the light that falls upon your neighbour changes its natural character of the free gift of heaven to men, and becomes a marketable commodity.

Among alternatives to restriction or depreciation of the right to build is the simple expedient of enlarging the means of access of light to the obstructed tenement. Surely a natural alternative, and one that can be economically effected in the majority of cases. The benefit of light derived over another's land is still enjoyed and mutuality obtained without much cost. The cost of enlarging the light—say plus 10 per cent. of its amount for involuntary action—would provide a smaller and more effective basis for compensation than those employed at present, whose name is legion and mystery.

Thus in many ways restriction has been avoided and evaded, and we cannot readily believe that in the large number of cases and individuals represented by these exceptions, any substantial injustice has been endured by an owner of a light. His property does not appear actually to suffer in valuation if he is debarred by covenant or law from a cause of action against his neighbour; or should he be unlucky enough to have an important building erected within his reach and just a year before his prescriptive term, he has lost only a sporting chance of making a good sum in compensation, but it was his luck rather than his right that really failed him. The law recognises no hardship before the magic prescription day, and if it is vain to pretend one before, why should it not continue so afterwards?

IV. PROPOSALS FOR REFORM BY STATUTE.

I do not propose to consider at any length suggested alterations of the law or reforms that involve legislation. It were a simple way out of all the difficulties and anomalies to propose and enact that no right of light over the property of another shall be recognised at law, this being to apply the principle of French law on the point.

The Swedish principle (explained in a paper by Mr. Alex. Beazeley published in the Transactions of the Institute, Vol. II. N.S. p. 125) is also simple, enacting that property may be charged by agreement with an easement for the benefit of another, but such agreements must be in writing and be registered, easements of prospect, windows, rights of way, access

to water, and others, being thus dealt with. Such registration when once effected need not be renewed, but the rights comprised in the agreement may, with the consent of the person enjoying them, be subsequently abridged or extinguished. The building law of Sweden also regulates the distance of overlooking windows from a neighbouring plot. Windows cannot be placed nearer than from 7 feet 9 inches to 14 feet 6 inches from the boundary of the plot except by the written consent of the adjoining owner, which consent, however, does not bind a subsequent owner unless he ratify it—a qualification which would appear to render the consent purely temporary. This written consent has to be registered as a contract.

It were also simple, though not so drastic, and would still retain a large field for surveyor's practice, to enact the principle of Scotch law that rights of light exist only by grant expressed in writing, or as a basis of purchase; upon the fundamental principle that every servitude is founded upon the consent expressed or implied of the servient owner, no right of light being obtained by prescription.

The substitution of one of these systems for our present condition—the French of no property at all in light over another's land, the Swedish of registered agreement of any such charge of right of light, or the Scotch of the recognition of a right of light where the grant by consent or implication can be proved, but denying acquisition by prescription—would be an ideal worthy of long and determined effort. Either of these ideal results could, however, only be attained by legislation of a public and general character. The required Bill need not be a lengthy one: a short preamble and a very few clauses of repeal would give the *coup de grâce* to prescription as applied to rights of light, and, if desired, add regulations as to permissive contracts of easement—the law of the three kingdoms being thus harmonised on a unionist policy, and another welcome economical importation from the Land o' Cakes brought to our homes and practice. If such a legal reform could be initiated and carried quietly through by the Government, assisted by the Scotch and London members of the House of Commons, a considerable and welcome relief would be afforded to building operations in towns, and much pressure taken off the cause-lists of overworked judges.

The omnipotence of Parliament, the simplicity of the possible legislative remedy, the exceptional condition of English law upon this matter, and the growing abuses of the present system, would make a good case for an extended discussion of such reform by statute, if it were at all within the region of our expectancy, or corporate capacity for public action. But we must all be conscious that this body is not a proper champion for the redress of public grievances, which have arisen in extensive though small vested interests. It would probably be found that the suspension of the Prescription Act in one particular would arouse suspicions of encroachment on other ancient rights, and the way to success would be long and difficult for any Member of Parliament who might undertake the introduction of such a measure. The Government, of course, if they drafted or furthered a Bill, might be able to carry it through, subject to the state of public business, but this is seldom promising to measures affecting private rights and properties. The prospect is sufficiently unpromising to deter me from hoping for relief in the near future or in this generation from new legislation, though the importance and advantage of such relief may be resolved upon, and represented to the authorities or Houses of Legislature by petition without doing any possible harm.

The important report of the Science Committee of this Institute, which after some long period of previous discussion and consideration was presented in 1893, recommended a procedure which involved legislation. At that period the clauses of the London Building Act of 1894 were in process of discussion before Private Bill Committees of Parliament, and it was hoped by the authors of that report that the Council of the Institute might obtain some

measure of reform by securing the assistance of the London County Council, who were the promoters of that Bill.

It was proposed in the report of the Science Committee to obtain deliverance from impending dominant lights, that is, from lights whose prescriptive right was being acquired though not matured, by serving a notice, advertising, and exhibiting a placard in the nature of a sky-sign opposite to such a light for one year, which exhibition should have the effect of a substantial obstruction, the prescriptive term thereupon being recommenced. The report also embodied a suggestion originally made by Professor Roger Smith, that disputes as to rights of light should be defined by the service of a notice of intention to build on the owners of adjoining dominant lights, and include the nomination of a surveyor, as in party-wall notice procedure. The process then followed, in the event of non-consent, by the appointment of a surveyor by the owner of the light, and the nomination by the two of a third surveyor, any two of whom making an award, from which an appeal would lie, not to the county court, as in the case of a party-wall, but to an official referee sitting with a professional assessor, appointed by the Local Government Board or by the Home Secretary, this appeal being final.

These two suggested reforms (which would have applied to London), first of relief from impending dominant lights by a technical obstruction, and second of procedure by removal from the Courts of Law to three surveyors for award of all complaints, if desirable in themselves, are open to this objection, that as legislation is required to effect them, it would be better to seek a more drastic method of dealing with the whole law of ancient lights, which Parliament could as easily accomplish, and which would probably avoid the necessity of any reform of procedure, as there might not in that case be any to reform.

With regard to the first suggestion I would point out that it was proposed to perpetuate all existing ancient lights, as power was only sought to substitute a technical for an actual obstruction, in order to prevent lights, not yet matured as ancient, from obtaining prescription. All the existing tyranny of the prescriptive light would be preserved and increased, as it would obtain the enhanced value of an edition limited in number. The proposed relief would have to be secured by the erection of unsightly temporary notices, liable to rapid dilapidation, upon the skylines of every building, it being impossible to conceive a building in London that has not one observant light somewhere in its neighbourhood. This would result in a new class of buildings altogether, namely, those technically protected during the period of prescriptive growth by means long since vanished, and proof of these matters of absent fact would become an integral part of future actions for protection or restraint. A new element of complication and conflict of doubtful advantage would thus be provided, the non-repeal of the Prescription Act in its application to lights ensuring a still ample field for conflict.

To remove this conflict from the Courts of Law to a tribunal of surveyors was the second reform suggested, based upon the more or less successful operation of a similar procedure in party-wall cases under the Metropolitan Building Act of 1855.

I venture with deference to express the opinion, that while three surveyors meeting upon the *locus in quo*, may provide the best possible authority for determining the facts as to the measurement and structural circumstances of a brick wall, they are not therefore, by analogy, competent to try facts which must depend on the testimony of witnesses other than themselves; title, history, user, and the new technical obstruction, its fact, title and history, would all have to be thoroughly proved by evidence, covering a history of twenty years at least, before the simpler technical matters of measurement, obstruction, and estimation by presumption of its effect, could be reached. I am sadly not convinced that my brethren would

form the best tribunal for such a trial. It may be an anachronism in an architect, but, in no disrespect either to my own profession or to that of the law, I affirm a conviction that a Judge who does not know the top of a plan from the bottom, would be a better interpreter of the evidence necessary to a just decision.

But, waiving any question as to the suitability of the tribunal as proposed, it is questionable whether any saving of time and expense in procedure would be effected, as it would be impossible to avoid instructing solicitors in order to prove titles and diversity of interests, as well as to obtain evidence of facts and points for appeal. There are possibilities of complication of practice, and payment of the extravagant fees that even sometimes occur in party-wall procedure, and which in those matters make one sometimes long for the decisiveness, whether for or against your case, of a Chancery Judge's "view of the case."

The whole report of the Science Committee is evidence of a certain and rooted dread of existing methods of procedure. The evil is present with us, and the suggestions for reform, whether practicable or not, show that it is considered almost unbearable, though the possibility of a remedy by legislation is remote, and at present scarcely within the region of practical politics.

V. REFORM WITHOUT NEW LEGISLATION.

Under the circumstances, we may conclude by considering whether anything can be done, apart from appealing to Parliament, to avoid the abuse of delay in procedure which is so fruitful a cause of improper claims, and to lessen the hardship and difficulty of the application of the existing law, until such time as Parliament may come to our aid, and remove another of the ancient anomalies of our system of equity.

We may with possible advantage suppose, that the uncertainty and want of harmony in the decisions upon many cases arises from the lack of agreement among architects and surveyors, as professional witnesses, upon a system for the measurement of obscuration and estimation of its effect. The removal of some of this glorious uncertainty, by the gradual recognition and establishment, as a precedent, of a readily-applied system of measurement of obstruction, would prevent many unreasonable claims from being made, and deter claimants whose professional advisers could readily apply an accepted and customary rule to each case. There will doubtless remain other points, such as sufficiency of light for special purposes, upon which the stream of contradictory evidence can concentrate itself; but in very many cases this would not be the case, and a simple general rule will suffice. The position of the building owner in resisting unreasonable demands, as well as of his architect in preparing the original design for his building, will be strengthened and assisted.

This Institute would, in the consideration of the scientific application of measurement to the access of light over buildings to windows, find a proper and fruitful field for investigation and useful public work. The subject would be found to be one wholly in the region of concrete facts, with little scope for individual opinion. The access of the sun's rays in London during the hours of daylight, upon every day in every month of the year; the average quantity of sunshine; the actual direction of the rays and the measurement of shadows; the comparative value for lighting purposes of high rays, and the periods in the year and hours in the day when each are available; and the diminishing values of lateral rays—all these are factors as to which little enquiry is needed, and dispute impossible.

Simple principles of delineation, for application to any given case of a light and obstruction, would be readily stated, and could with advantage be recommended for adoption. The

calculation of ratios of obscuration and percentages of sky area before and after building operations, which, owing to their terseness and statistical appearance, perhaps now carry more weight as evidence than they are entitled to, could with advantage be applied upon an admitted basis of light values, and proceed then to prove a ratio that has proportion to a whole, and a percentage upon an honest capital.

I am sanguine that the experience and skill of the many members of this Institute who are eminent in this class of practice, would, if they can be brought to consider the matter in a scientific rather than a professional spirit, and to concentrate their thought upon agreement as to a basis of scientifically technical evidence, be productive of valuable results. I may mention that comparatively little use has yet been made of exposed sensitive photographic plates as means of measurement for values of light. It should not be difficult to make a technical and scientific use of so certain a method.

A fuller study of this subject by architects must result in their being able to afford material assistance to the Courts of Law, in hearing and deciding cases upon a more systematic and consistent basis than at present, the Courts being in many cases compelled to discount and attach little weight to professional evidence on both sides, for want of a common system of measurement. This reform is within the grasp of our own hands, without the assistance of Parliament, and would not only be worthy of this professional body, but would gradually and surely ameliorate the conditions of our practice as architects.

I am more doubtful as to the propriety of urging the advantages of any alteration in the practice of the Courts, which we cannot effect, but it is worth while to draw attention to the beneficent effect of refusing injunctions, interim or mandatory, and granting money damages after trial. The operation of injunctions is so severe that their exercise may, without undue laxity, be confined to cases where there is probable or possible evasion or contempt of the process of the Courts. Considering the limits already placed by the Legislature upon the height and extent of buildings in the public interest, it may reasonably be urged that further restriction may be met by money compensation. This course of action will remove the costly peril of delay, which is the consideration mainly underlying the large and unreasonable claims that are made and enforced under the shadow if not under the ægis of the Courts. This matter is in the hands of the Judges, and I do not think that it would involve more than an extension of a method often adopted in present practice, while the steady refusal to delay building operations, must bring relief from the growing and serious evil of the "blackmail" to which I have referred.

The assessment of the money damages for obstruction of light, if more general, would not, I anticipate, prove any serious difficulty. This should not be a matter of professional valuation and opinion, but should in all cases be for proved damage, and *pro rata* diminution of rental, market, or other value, or for increased cost of lighting. Each of these can be proved or not upon the merits of the case; and, technicalities apart, the real and ultimate scale for compensation is a matter of fact, not opinion. The expedient of enlarging a light, to receive a wider access over another's land, should again be mentioned as an economical and actual compensation, procuring in many cases a definite improvement of lighting. The effect of requiring proof of actual damages, of awarding money compensation, and of refusing to delay by injunction except in special cases, would be to deprive claimants of the sources of improper gain through delaying building operations, and afford, on proof at trial, proper compensation, the amount of which would bear relation to the injury done.

Either of my two suggested improvements in procedure will effect some alleviation of the present distress, while in conjunction with each other—a consummation for which we can

well wish—almost all the evils from which we suffer through the present operation of the law and practice of ancient lights, would be mitigated, if not entirely removed. The Englishman will continue to enjoy his peculiar heritage of a vested interest in his neighbour's property—at all events, until the progress of political light leads the Legislature to reduce him in that particular to the level of a Scotchman or foreigner—and architects, having a more definite knowledge of the legal requirements of their clients' neighbours, will have the pleasure of proportioning their elevations and erecting their dreams without the corroding fear of unknown ills.

APPENDIX.

The Science Committee's Report, 1893.

The following are the proposals in the Report on Light and Air referred to by Mr. J. Douglass Mathews [*ante*, p. 219]. They were drawn up by the Science Standing Committee, and discussed by the General Body on the 13th March 1893:—

1. That the owner or occupier of any tenement, who considers that his ancient lights will be or have been interfered with by the erection or proposed erection of new premises or alterations to old ones, shall have the right to inspect the drawings which shall be prepared by the building owner of the premises which cause such interference, and take such particulars therefrom, or from the building itself if erected, as may enable him to ascertain whether there is ground for complaint.

2. That if such neighbouring owner or occupier consider that the lights of his premises will be interfered with, he shall, within seven days from obtaining such particulars as above, give notice of his objection to the owner of the premises erected, or in course of erection or alteration (hereinafter called the building owner), together with the name and address of a surveyor, who shall have power to act on his behalf.

3. That upon receipt of such notice the building owner shall acknowledge the said notice, and inform the person from whom he received notice of the name and address of his surveyor, who shall also have power to act on his behalf.

4. That such two surveyors above stated shall, within seven days from the receipt of the last-mentioned notice, meet and discuss the objections taken to the work proposed to be or already executed by the building owner, with a view to settle such differences, and in the event of their not agreeing they shall refer the matter in dispute to an umpire, being a member of the Royal Institute of British Architects or of the Surveyors' Institution, who shall view the site and buildings, and take such evidence as he may think necessary, and make an award, which shall determine either or all of the following, viz.:—The right of the building owner to carry out his intended works, the alteration (if any) necessary to be made in carrying out the proposed new buildings or alterations to prevent or lessen the obstructions, and the amount (if any) of compensation of every description to be made, the alterations or improvements to the adjoining premises by light-reflecting surfaces or other means, the amount of costs to be paid by each or either party, and, generally, all matters required to arrive at a settlement.

5. That in the event of either party neglecting to appoint a surveyor within the time before prescribed, or the unwillingness of the umpire appointed to act, and no other umpire being agreed upon, that either party shall apply to the President for the time being of the Royal Institute of British Architects, who shall appoint an umpire with all the powers as before described.

6. That in the event of either party refusing to accept the award, he shall have power, within one month from the publication of the said award, to appeal to a tribunal composed of experts, consisting of seven persons—two of whom shall be Barristers, three Fellows of the Royal Institute of British Architects, and two Fellows of the Surveyors' Institution—three of whom shall act in each case, one of such three being a Barrister. Such tribunal shall decide as to whether the award is sound and equitable, or to so modify it as in their opinion may be necessary, after hearing evidence, with or without viewing the buildings; and they shall have full power to determine the way in which the new building or alterations to the old building shall be carried out; but if either party be dissatisfied with the sum awarded as compensation, he shall have the right of appeal to the High Court.

7. Provided always that a proper undertaking to pay the costs and expenses incurred in delaying the work, if the decision of the first award be adverse, shall be given by the person so appealing from the said award; and that no further appeal shall be allowed where the compensation awarded does not exceed Twenty Pounds.

8. That after the passing of the Act the owner of any tenement not at the time servient to some neighbouring tenement, but over which such neighbouring tenement would in course of time acquire dominant rights, may serve upon the owner of such neighbouring tenement a formal notice, in form and manner prescribed in the Act, and may advertise the same in the daily papers, and such notice shall have the same effect as though an interruption had been submitted to for one year immediately previous to the date of the service of such notice.

9. That no building erected after a certain fixed date shall acquire any rights of light over neighbouring property.

DISCUSSION OF THE FOREGOING PAPERS.

The President, Mr. Wm. Emerson, in the Chair.

The PRESIDENT said they were all conscious of the great importance of the subject of the eloquent and interesting Papers read to them that evening. There was no doubt that the present unsatisfactory state of the law relating to ancient lights was responsible for many acts of great injustice and even atrocious blackmailing by unscrupulous persons. The Institute had had the matter before it several times during the last twenty or thirty years. As they were now in the last year of the century it would be a good thing to bring the matter to a head, and by some concerted action urge upon the Legislature the necessity for an alteration in the law. The matter might form an interesting subject for ventilation at the Congress of Architects to be held at the end of June—that was merely a suggestion, perhaps it might not be thought a suitable subject; at any rate, he would do his best to see that the matter did not fall through, as it appeared to have done on previous occasions. The subject was of too great importance to discuss at so late an hour; he would therefore propose that the discussion be adjourned until the 9th April, when the whole evening could be devoted to it. They would meanwhile have an opportunity to carefully consider the Papers, and he had no doubt that many valuable suggestions would be forthcoming from gentlemen conversant with the subject. For the moment he would simply call on Professor Roger Smith to propose, and Mr. Strahan to second, a vote of thanks to the authors of the Papers.

Professor T. ROGER SMITH [*F.*] said that at that late hour he would not encumber the proposal he had the honour of putting before them with many observations. He asked the meeting to accord a cordial vote of thanks to the distinguished Queen's Counsel, and to the two Fellows of the Institute, who had poured a flood of light on the subject before them. They were specially indebted to Mr. Fletcher Moulton for the lucid way he had sketched out the basis on which could be reasonably rested a claim for a mitigation of many universally acknowledged evils. Mr. Moulton pointed out that, as the situation in England had greatly changed since the Prescription Act became law, and as the aggregation of people in large towns was increasing, a necessary alteration of circumstances demanded relaxation of the law, and the basis he had so admirably laid down was one which had been present to all their minds, although they had never before been privileged to hear it so clearly and incisively put forward. They were indebted to Mr. Douglass Mathews for an exceedingly practical statement of many of the troubles and difficulties that exist, and for reminding them what had been done on a previous occasion by the Science Committee of the Institute. They were likewise indebted to Mr. Beresford Pite for his suggestive Paper, including his very drastic suggestion for destroying altogether the subject of discussion that evening. He was afraid they could not expect the magnanimity of the Legislature would go so far as that, but there were other suggestions in the Paper which were of great value and exceedingly well worth considering.

Mr. J. A. STRAHAN, M.A., LL.B. [*H.A.*], in seconding, said that although the hour was rather late he proposed to say one or two words upon the subject as a lawyer. In the first place he would like to say that the only way this very unsatisfactory branch of the law could be improved was by conferences, such as they had had that evening, between lawyers and architects, not—as some people seemed to think—between men who were practical and men who were not practical. The lawyer, from his own standpoint, was as well acquainted with the subject as the architect; but he was acquainted with it from a different standpoint, and it was only by bringing the two branches of knowledge together that the desired result could be arrived at. Mr. Pite had indulged in a very drastic criticism as to the mode in which the right to light was acquired. He had described that mode as dishonest. No doubt all systems of limitation were dishonest to a certain extent; but any lawyer who possessed experience in tracing title would know that, as a practical necessity, some point would arise when a right which had been long enjoyed unquestioned must be recognised as a legal right. With regard to twenty years giving the right to light, twelve years' enjoyment of land would confer the ownership of the land itself. If one owed a sum of money and neglected to pay it for six years, the claim to it was gone, and it could not be recovered. No doubt it would be very dishonest to set up the Statute of Limitations; but every lawyer knew that as the law stands it would be impossible to make a title to rights over land except some period was fixed when the actual possession of a right would ripen into the legal possession of it. No doubt the easement of light was objectionable. In many

countries it did not and could not exist. That was a reasonable state of the law, perhaps; but as long as it was permitted to exist here, it could not be specially immoral to treat it as one treats rights of way and scores of other rights—that is, after a certain number of years' enjoyment without interruption, to acknowledge it as a legal right. The ancient law on the subject was not nearly so unreasonable as the law at the present moment. Mr. Fletcher Moulton had referred to the fact that a change had taken place in the national life, and that we live now far more in towns than formerly, and that consequently those old rights which were reasonable when we were primarily a rustic people had become very unreasonable when primarily we live in towns. He quite agreed, but under the old law the rights did not exist in many towns. Until the Prescription Act, a right to light could not by special custom be acquired by long user in the City of London, and one of the worst examples of careless legislation was the fact that that Act was passed apparently without any criticism being made by lawyers on the fact that it established rights over property all through the City of London which did not previously exist. It seemed to him that there were three improvements in the law very easy of accomplishment, which had been referred to, principally by Mr. Moulton, and also by the other speakers. The first was with regard to giving damages instead of granting an injunction where the right had not absolutely been interfered with, but where it was threatened to be interfered with. The intention of Lord Cairns's Act was to give the Courts a discretion, and he thought that the decisions since the passing of the Act had acknowledged that there was that discretion; but, as Mr. Fletcher Moulton said, the Courts were loth to adjudicate on what they felt themselves utterly incompetent to deal with. The Court should have the right to issue an injunction, but the law should be altered so that an injunction should not issue except where irreparable harm would be done; where no irreparable harm would be done by interfering with the light, the Court should refuse an injunction and refer the question of damages to a special tribunal, such as had been mentioned. The second point where improvement in the law might be made was with regard to allowing compensating advantages to be given as partial compensation for the injury done. The Courts refused point-blank to take into consideration such things as arrangements made by which the interference with light might be mitigated, such as by the use of white tiles. In the present state of the law they had no alternative, but a very small alteration in the law would work a great improvement in that respect. The last point was with regard to interruption. The law as to interruption of enjoyment was at present in a very unreasonable state. It was unreasonable to expect any person to do such an unneighbourly act as to block up windows which were doing no harm, and as a matter of fact it was not absolutely necessary in most cases to do so. If by persuasion, or by a threat to block them up, his neighbour could be induced to enter into a written agreement that he (the neighbour) enjoyed the light by his leave, then the right would not accrue. But that, too, was objectionable. He thought, however, the remedy for that would be found not in altering the mode of interruption, but in applying a principle already recognised by the law. Under section 12 of the Land Transfer Act of 1897, if a person registered himself, after investigation of title, as owner of certain land, no one could, subject to certain limitations, acquire the ownership of that land by adverse possession. Why should not that principle be extended to easements? Why should a person not be able to register his land, mentioning what easements exist, and thus prevent other easements arising? When once registration of title was compulsory, the difficulty in investigating title would not arise: it would only be necessary to refer to the register to find out whether one's neighbour had an easement or not, although he might have had windows overlooking one's land for twenty years. Another point was that referred to by Mr. Fletcher Moulton, as to the difference between the right to light and the right to air. The tendency of the Courts was to apply to them the same principles, and to hold that a person could not acquire the right to air except through a defined channel. The most shocking example of how this works out is seen in the decision (so contrary to common-sense and justice that no architect had ever acted upon it) in the case of *Bryant* v. *Lefevre*, where it was held that a person might build his house as high as he pleased without carrying up his neighbour's chimneys, and cause whatever draught down those chimneys he pleased, because technically he was not interfering with the access of air. The law had departed now altogether from that. The latest case was *Chastey* v. *Ackland*. There it was held by the Court of Appeal that there could be no right by prescription to air coming over the roofs of houses. The decision went to the House of Lords. It was not actually reversed, as the parties settled, but the House of Lords intimated its intention of reversing it, and that could be only on the ground that the right to air was different from the right to light—that while you could only acquire right to light through a defined channel, you could acquire the right to air over an indefinite area.

[*Discussion adjourned to 9th April.*]

Mr. C. H. Brodie [*A.*], Hon. Secretary of the Practice Standing Committee, writes:—

It will, I think, be a help to those looking up this subject, and a useful addition to the Papers, if space can be found in the Journal for the following *résumé* of what the Institute volumes of Transactions and Proceedings contain bearing upon this important matter. These notes will show too that, although nothing appears to have come of the labours involved, the Institute and its Committees have not been unmindful of the subject or its importance. They will also show what the law and practice of other countries are. May we hope now that something will be done to bring the reforms advocated forcibly before the Government and other authorities, with a view to action being taken?

As long ago as 1866 and 1877 most important Papers were read by Professor Kerr and Mr. Locock Webb, Q.C., and a full discussion followed. These are quoted from later.

On 15th February 1886, our late Librarian, Mr. Alexander Beazeley, read a Paper on "Swedish Building Law," printed in Vol. II. Transactions, New Series. On page 120, under the sub-heading "Windows," it is noted that "no window or opening is allowed in a wall facing a neighbouring plot unless it be distant at least 7 feet 9½ inches to 11 feet 6 inches from the boundary, except by consent of the owner of that plot. His consent does not bind a subsequent owner unless the latter ratify it."

Further, such consent, should the opening be in a party wall, does not prevent the adjoining owner raising his building and blocking such opening.

On page 125 the law of easements on the subject is set forth. Briefly, all agreements charging one property with an easement of any kind over another must be in writing and registered. This can be extinguished. No easement can be acquired by prescription, and no man has even a right to put a window dominating his neighbour's property unless at the prescribed distance, and this conveys no right of light except expressly given in writing and registered.

All must agree with the author's remark that this is "extremely straightforward, simple, and accordant with common-sense."

Why, as regards *new* properties, cannot such a law be passed here, to date from, say, the beginning of next year?

In 1889, on the 3rd December, Mr. Francis Hooper read a valuable Paper on "Building Control, &c., in France," printed in Vol. V. Transactions, New Series. On page 14 the question of the "servitudes" imposed on building owners is treated, and these are strict as regards windows looking over neighbouring properties. There are no prescriptive rights attaching to such, as there are in England. The Code provides that neither windows nor balconies may be formed *parallel* to the boundary at a less distance than 6 feet 2 inches, nor in a wall at right angles or oblique to the boundary at a less distance than 1 foot 11 inches. The owner of a boundary wall may put lights in it on sufferance, provided these are fitted with stout iron bars and furnished with sashes obscurely glazed. These openings must not, however, be less than 8 feet 6 inches from the floor of the ground story, or less than 5 feet 4 inches from the floor of each upper story.

It will be remembered that it was through such a ground-story window that the few who escaped from the horrible Paris bazaar fire were chiefly saved.

A user of such a light for thirty years appears to give a limited prescriptive right, for the adjoining owner must thereafter keep his building—should he build—5 feet 4 inches distant from the wall in which such windows occur, but the height of his wall is not limited except to conform to the building law.

Under exceptional circumstances lights are permitted at less than the legal distance if the neighbour suffer no inconvenience, or in the case of a skylight, but these may remain only so long as the conditions remain the same.

In streets—these being public property—no rights of light accrue. It is wisely left to the building laws to say just what a man may or may not do. So he knows beforehand, and can design accordingly.

How different is it here!

In the discussion which followed, reported in the Proceedings 1889, Vol. V., pp. 70 *et seq.*, most of the speakers touched on this portion of the subject. Professor Kerr's remarks are particularly forcible. He said: "Mr. Fowler tells us that he cannot see why—and I do not think any of us can—a man should be able to take an easement of light from his neighbour and retain it for ever. . . . But the inconvenience that arises in London from the practical application of the law of ancient lights is indescribable. It comes to this, that a shopkeeper in a back street will seriously argue that his neighbour is not to be allowed to put one brick upon his fence-wall without his leave, and the trouble into which neighbours get, and the hallucinations under which they labour as regards their rights to blackmail each other, are remarkable." Mr. Blashill said: "It does seem to me that on the important questions of terminable leases and of 'light and air,' if this Institute discussed them with the determination of coming to some firm determined resolution which might be put forward as the opinion of the leading body in the profession, it would have some useful influence on any administrative body which exists or is likely to

exist in London." This was said on 3rd December 1888. Mr. Blashill was then a Member of Council, and is so still. What has been done? Nothing.

In the same volume of TRANSACTIONS (1889), on p. 99, will be found some remarks by Mr. J. J. Stevenson in the course of a Paper on "Laying Out Streets." He said: "Some restriction is necessary as to the heights of buildings. . . . There is already such a restriction in the right of ancient lights, which acts, however, in a perfectly haphazard and irregular manner, depending on mere accident, and consisting in stealing a neighbour's property if he does not look out, at cost and trouble to himself, to prevent it. I believe England is the only country where the law recognises such a custom. It does not hold in France or Scotland, nor, I believe, in any of our colonies.* In Scotland a man must depend for his lights on his own ground. It is a private, not a public, right, and it has no value in securing general light and air. It rather tends the other way, enticing the owner to build near his boundary or even on it, on the chance that the attempt may not be noticed, and his neighbour's property be gradually stolen. I gathered from the expression of opinion at a recent meeting, when an excellent Paper was read on the Building Laws of Paris, that my brother members would approve of its abolition. This could not be done at once. Owners could not be deprived of rights already acquired and sanctioned by law. But they might be compelled to take compensation, ... instead of the possessor of ancient lights having, as now, the absolute power of preventing a man using his own land or of extorting compensation in excess of the injury. In any case, the injustice might be stopped for the future by a simple proviso that when not already acquired no rights of ancient lights should in future arise." Here is, at any rate, something to work for, and at once. In the discussion which followed, Mr. E. T. Hall referred to a Paper by Mr. Locock Webb, Q.C. This was "On the Law of Easements," read on 17th December 1877. It is printed in the TRANSACTIONS for that year (Vol. XXVIII.), p. 88 *et seq.*, "ancient lights" being specially dealt with on p. 94, and many decisions quoted, and the angle of forty-five degrees treated of on p. 98. In the discussion Professor Lewis mentioned an important case (p. 101) where lights admittedly not ancient could not be obstructed because the man who sold the building containing them sold also the adjoining land, and it was held each with existing rights. This is a most interesting and very "tricky" position, and one very difficult to trace in many instances.

In the same discussion Mr. J. Jennings (p. 104) quoted a case in which a building of seven stories was erected with windows dominating neighbouring land, and where to block these would have cost more than the then value of the land. He added: "So far as I am aware, there is no remedy if persons put up buildings under such circumstances; therefore I think it most desirable that whenever the law is altered (and I think it should be altered in several respects), there should be no right of light except by grant." Mr. T. Chatfeild Clarke made a strong appeal for the *compulsory* reference of light cases, to avoid the costs and uncertainty of a law court's decision (p. 107). He said: "So many opportunities are now afforded for litigation, when the effort is often one merely to extort money, that a remedy is urgently demanded." He was backed up by Professor Kerr, who said: "But it is obvious that the right and wrong of the matter is this—let every man build on his own land, and let every man derive his light from his own land or from the public street." In replying, Mr. Locock Webb said he had a pet scheme for settling ancient lights disputes without going to law; but he did not state it. Did he ever? All this was in January 1878. How much nearer a solution are we now—twenty-two years later?

But let us go even further back. In the First Series of TRANSACTIONS, Vol. XVI. [1866] p. 170, are reported some remarks of Professor Donaldson (following a Paper by Professor Kerr), in which occurs the following: "It seems strange that the law should so disregard the rights of an owner that if a neighbour should cover his plot with a building and derive all his easements of air and light from his neighbour's land, the law does not protect the neighbours from such an assumption nor even by law compel the abatement, but forces them to protect their rights by the expensive process of erections in front thereof—erections possibly useless and nuisances to themselves, and occupying space. Why should they not be able to protect their rights by proper notices, or by law be enabled, as, I believe, is the case in France, by a short process to compel the abatement of the trespass?" This was said on 21st May 1866. "Trespass" is the right word. One may lock up a wretched youngster for going on land in search of perhaps a few birds' eggs; but the owner of adjoining land may by erecting a building filch away perhaps your whole user of it, and after a time there may be no redress whatever.

Professor Kerr's Paper is printed in the same Vol. XVI., at p. 149, and incidentally he remarks that "even Lord Chancellors did not hesitate to deplore the effect of the decisions they were pronouncing, and to suggest that the time had possibly come for the Legislature to interfere (both Lord Westbury and Lord Cranworth)." And this, I repeat, was in 1866.

But to return to more recent papers. In the

* Nor in the United States might have been added. —C. H. B.

New Series of TRANSACTIONS, Vol. VI. p. 117 (1890), Mr. John Slater, in a Paper on "Building Legislation," said that it was only after the second Punic war, which finished 202 B.C., that any Roman law affecting rights of light and prospect became necessary. "Both in Roman and Byzantine regulations are found powers to control the height of buildings." Further on in the same Paper (p. 131), Mr. Slater remarked: "If a comprehensive Building Act were in operation it would prevent all acquisition of prescribed rights of light in the future, because, as I have shown, it would invariably allow sufficient light to all windows. . . . In Scotland there is no right of light under prescription or under statute, and many people would gladly welcome such a state of things here. . . . In far too many cases the damage inflicted by raising buildings is infinitesimal, and there cannot be the slightest doubt that injunctions are often applied for with the sole purpose of getting something out of the pocket of the building owner by threatening serious delay to his works." Commenting on this Paper, Mr. Holden remarked (PROCEEDINGS, Vol. VI. p. 251): "The obtaining of an easement by prescription is, in my opinion, a simple piece of dishonesty."

Vol. IX. of the TRANSACTIONS (1893) contains, on pp. 235–243, one of the most important Papers perhaps ever published on the subject of "ancient lights." It is a Report of the Science Standing Committee submitted to the General Meeting. It is not necessary to quote from it or the very long discussion upon it; now that members have the reference, it is better they should study it themselves.* But it is interesting to note that it contains proposals put forward recently by another Society without, as far as I am aware, the slightest reference or acknowledgment. Yet this Report was considered on 13th March 1893. It was eventually referred back to the Committee—after an approval of its "general principles"—for "revision of details."

The Revised Report is published in Vol. I. JOURNAL, 3rd Series (1st March 1894), p. 323, and it is stated that the Committee recommend the Council to ask the L.C.C. to include clauses similar in effect to it in their new Building Act. I am informed that this was done. But the matter does not seem to have been pressed, and the result is that others have been allowed to take a position before the Law Officers of the Crown and elsewhere, which the Institute, from its vastly greater influence, should have assumed. The Revised Report is considerably whittled down from the original, and contains suggestions simply for (1) applying to "ancient lights" the exact procedure provided in the London Building Act, 1894, for party walls; and (2) enacting that after the passing of the Act proposed a servient owner may by simply serving a notice on the dominant owner, and by advertisement in the daily papers, prevent the acquisition by the latter of "ancient lights."

The first of these proposals for settling actions with regard to interference with existing ancient lights is, in my opinion, excellent, but the second does not go far enough. Why should I have to serve notice on a man who proposes to steal from me, that I do not intend to permit it? Where is the logic of such a position? The law is supposed to be such as to prevent theft by punishing the wrongdoer if he breaks the law. That is the position with regard to all questions but that of ancient lights. There it is the victim of the theft that is punished. If a man trespass on my land I can punish him. If he create a nuisance I can get an injunction against him. But if he *build* he becomes the *dominant* owner, and it is he who can invoke the law to prevent me making a fair, or perhaps even *any* use of my land. Such a state of things at the beginning of the twentieth century is monstrous.

Nothing less than the stoppage from a certain date of all right to acquisition of light except from the curtilage of the premises of which the lights are a part, will be either fair or satisfactory. And it is this and the settlement of disputes without resort to the Law Courts that the Institute should set itself vigorously to secure—in conjunction, perhaps, with the Surveyors' Institution.

* Reprinted in the present number as an Appendix to the foregoing Papers [p. 231, *ante*].

9, Conduit Street, London, W., *24th March* 1900.

CHRONICLE.

Professional Advertising.

The question of professional advertising having been considered by the Council, they particularly desire to direct the attention of members to the following two resolutions passed at their meeting on the 5th March :—

1. That it is not derogatory to the profession for an architect to sign his buildings in an unostentatious manner, similar to that adopted by painters and sculptors.
2. That it is undesirable for architects to place their names on boards or hoardings in front of buildings during course of construction, for purposes of self-advertisement.

The Supporting Power of Rocks and Soils.

The Science Standing Committee has undertaken an inquiry into the supporting power of rocks and soils.

The aim of the undertaking is to ascertain, if possible, the actual carrying power of the ground itself under normal or abnormal * conditions. It is *not* intended to include an inquiry into the methods for overcoming deficiencies in foundations.

Members of the Institute and of the engineering profession can materially advance our knowledge of this somewhat neglected subject if they are willing to co-operate with the Science Committee, either by giving the results of their personal experience, or by referring to results of this nature published at home or abroad.

The following suggestions are made as indicating the general scope of the inquiry. It would materially facilitate the work if those who are good enough to volunteer their assistance would, as far as practicable, record their observations in the following manner :—

Geological Data.—The *geological name* of the bed referred to should be given, together with the precise nature of the rock or soil referred to, and, if possible, the thickness of the bed. The relation of the particular bed to those above and below it should be dealt with, and the precise locality and height above O.D. should be stated. Wherever practicable, reference should also be made to the geological maps and sections of the district, where such exist.

It is thought that by such evidence it may be possible to correlate beds of similar geological age and formation in different localities. When only general terms are used, as, *e.g.*, clay, sand, gravel, and the like, no such comparison is possible ; but if a particular stratum of, say, the Oxford Clay, is referred to in a particular locality, it may be possible to form a close comparison of the bed in that locality with a similar stratum in another locality.

Physical Data.—So far as the physical facts are concerned, they should likewise be as precise as possible. The circumstances under which the information was obtained and the nature of the load should be correctly stated, and it should be made clear that it was either an actual known dead load or a calculated floor load. It is also necessary to explain how the load was applied, including depth below surface, to state the superficial area tested, the weight per foot superficial, and the actual result of the test.

Generally.—For the sake of precision it should be stated if the information is the result of direct experiment, with a view to ascertain the supporting power of the rock or soil, or if it is the result of observation upon a building or other similar load.

It should also be stated whether the observations or experiments are original or are references to published results.

The Committee will be glad to receive promises of assistance on the above lines, and communications from the members of the Institute will be welcomed, with any suggestions tending to a more complete inquiry.

* As, for example, a plaster-clay in its ordinary condition, and when drained of its moisture, or hard.

The late Alexander Kendall Mackinnon [*F.*].

Mr. A. K. Mackinnon, whose death was announced at the Meeting of the 5th inst., was born at Monte Video in 1826, and educated in England —first at Hoddesdon, Herts, where he acquired a taste for scientific studies, and subsequently at University College, London, where he attended the Engineering and Architecture classes, distinguishing himself especially in civil and mechanical engineering. He served for a short time under Mr. Thomas Page, the Department Engineer of Woods and Forests, and in 1852 left England for Uruguay. After filling the post of Engineer to the Gasworks, Monte Video, he proceeded to Buenos Ayres, where he was appointed on a Government commission to report on designs for the Custom House. He next prepared designs for the first section of a railway from the capital to San José de Flores, and plans and estimates for the lighting of Buenos Ayres with gas. Re-

turning to England, for seven years he was engaged in tin and copper mining in Cornwall. In 1863 he again went to Uruguay, and, in recognition of his services to the city of Monte Video in laying out new roads and carrying out various improvements, he was appointed Director-General of Public Works. In this capacity very extensive and varied work passed through his hands. By his efforts the use of the theodolite instead of the compass was made obligatory in all surveying operations in Uruguay, and he initiated the geodetic survey of the country. He fixed the gauge for the railways of Uruguay, and planned and carried out a reclamation scheme and the construction of a sea-wall cutting in connection with the Central Uruguay Railway. He planned a network of telegraphic lines to join Uruguay to Argentina and Rio Grande do Sul, subsequently carried out; assisted in the formation of various railways and telegraphic cable communications throughout the Republic; and in later years presented the Government with plans for improving the harbour. Another office he held under the Uruguayan Government was that of President of the Topographical Department. Among his multifarious official services for the Republic was the successful negotiation of a loan of three and a half millions sterling, an operation which proved of immense advantage to the country. He also prepared designs for its gold and silver coinage, the dies being engraved by the late Mr. Wyon. Among the buildings in Uruguay designed and carried out by him were the London and River Plate Bank, the Lazaretto of the Island of Flores, various private buildings, the fireproof Custom House, and designs for the Orphan Asylum. Mr. Mackinnon devoted much attention to, and laboured hard for the development of the industries of Uruguay. He produced a voluminous Code of Industries for the then Native Society of Arts and Sciences, and sent seeds (grasses, plants, forest trees) for acclimatization to the country from all parts of the world, as also works on architecture, engineering, and agriculture. For some years since 1887 Mr. Mackinnon had been Consul for Uruguay.

Mr. Mackinnon was elected a Fellow of the Institute in 1870. He spent the closing years of his life in England, and a few months ago, at his request, was transferred to the class of Retired Fellows. He was also a member of the Institution of Civil Engineers and a Fellow of the Geological Society.

The late John Ruskin.

With reference to the statement in the article on Ruskin in the last issue that Mr. Ruskin, senior, lived in Bloomsbury, Mr. Henry Lovegrove [*A.*] writes that when Ruskin was four years old his father went to reside at No. 28 Herne Hill, the front top attic of which was for many years young Ruskin's bedroom. In 1850 the family removed to No. 163, Denmark Hill, and lived there for more than twenty years. The house on Herne Hill has been for many years occupied by Mrs. Severn (Ruskin's cousin), and her husband, the well-known painter. A memorial tablet is proposed to be placed in St. Paul's Church, Herne Hill.

The Librarian desires it to be known that the Library does contain the volumes of "Loudon's Magazine" referred to by Professor Kerr [*ante*, p. 182], and stated not to be in the Institute Library. Its proper title is *The Architectural Magazine*, and it is indexed in the Catalogue under "Journal" and "Loudon." The *Magazine* only ran to five volumes, and the Institute has them all. The series of articles under the title of "The Poetry of Architecture," signed "Kata Phusin," and written by Ruskin when in his teens, began in vol. iv. (1837), and were continued throughout vol. v. (1838). There are a dozen or more articles, some of them illustrated, under the following sub-titles: Lowland Cottages of England and France; Mountain Cottage of Switzerland; Mountain Cottage of Westmorland; A Chapter on Chimneys; The Mountain Villa of Italy; The Lowland Villa of England; The English Villa; The British Villa—The Cultivated or Blue Country; The British Villa—Hill or Brown Country.

Architects' Benevolent Society.

The Annual General Meeting of the subscribers of this Society was held in the rooms of the Royal Institute on Wednesday, the 14th March, Mr. J. Macvicar Anderson presiding, in the unavoidable absence of the President.

The Minutes of the last meeting having been read and confirmed, the following Report was read:—

In presenting their Fiftieth Annual Report the Council of the Architects' Benevolent Society have the pleasure to congratulate members of the Society on the attainment of its Jubilee, as it was founded in 1850. From small beginnings the Society has steadily developed to its present size and efficiency; during its existence many thousands of pounds have been collected and distributed amongst deserving applicants. Through the agency of the Society distress has been alleviated, domestic calamities averted, temporary difficulties, due to ill-health or other causes, overcome, and old age relieved of the burden of poverty. It has taken a place amongst philanthropic institutions, and provided for the architectural profession an opportunity for benevolent effort on behalf of its indigent members, which could not have been so effectively provided by other means. It is a matter of regret that this opportunity has not been more generally appreciated than has been the case hitherto. The desire, expressed at the first annual meeting of the Society and repeated frequently since, that every architect in active practice should become a contributor, is still very far from realisation.

The proposal to celebrate the fiftieth anniversary by a festival dinner, announced in the last issue of the Red Book, has been duly considered during the year; but, owing to the many calls upon private means in consequence of

the war in South Africa, it was decided to postpone the celebration to a more convenient opportunity.

The amount received in subscriptions during the year on which your Council have to report was £469 3*s*., which shows a small diminution on the amount received the year before. Eleven members failed to pay their current subscriptions, four withdrew from the Society, while ten new members have joined the list of subscribers.

The Council have gratefully to acknowledge the receipt of the following donations: Mr. J. Macvicar Anderson, £18 10*s*.; Colonel R. W. Edis, £10 10*s*.; Mr. F. Wallen, £5 5*s*.; Mr. G. Inskipp, £5 5*s*.; Mr. J. T. Christopher, £5 5*s*.; Mr. E. Tewson (per Mr. Roumieu), £5 5*s*.; Mr. Wm. Emerson, £5; Mr. J. M. Brydon, £5, and many smaller amounts.

It is with great regret the Council have to record the death of two of the most distinguished members of the Society, the Duke of Westminster and Sir Arthur W. Blomfield, both generous subscribers. Sir Arthur Blomfield was a Member of the Council at the time of his decease.

Six meetings of the Council have been held during the year, the average attendance at each meeting being eight.

The sum of £145 has been paid to the Society's six pensioners, and £552 4*s*. distributed amongst forty applicants for relief.

During the year, two of the pensions becoming vacant through death, the places were filled by eligible candidates.

The following gentlemen, being the five senior members, retire by rotation from the Council: Mr. H. L. Florence, Mr. J. T. Christopher, Mr. Sydney Smirke, Mr. W. Grellier, and Mr. E. W. Mountford. Further vacancies have occurred through the resignation of Colonel Edis and the death of Sir Arthur Blomfield. To fill these vacancies the Council have the pleasure to nominate Mr. Arthur Cates, Mr. E. A. Gruning, Mr. G. T. Hine, Mr. H. C. Boyes, Mr. Zeph. King, Mr. G. Inskipp, and Mr. J. T. Wimperis.

The Balance Sheet and Income Account for the year ended 31st December 1899, audited by Mr. Henry Dawson and Mr. Zeph. King, are submitted.

The Council wish to express the indebtedness of the Society to the Royal Institute of British Architects for office and other accommodation, and to the Secretary (Mr. Locke) and to his assistants for their helpfulness and courtesy in any matter connected with the Society.

In moving the adoption of the Report the Chairman regretted that the Society did not receive greater support from the general body of the architectural profession.

Mr. Arthur Cates, speaking at some length, submitted to the meeting a series of statistics which he had compiled from the Report and Accounts for 1898, from which it appeared that the total donations by present members of the Royal Institute to the Society amounted to £1,951 7*s*. 0*d*. This sum had been contributed by 117 Fellows and 37 Associates. With regard to the annual subscriptions, 138 Fellows and 88 Associates contributed annually £260 17*s*. 8*d*. He thought a larger proportion of members of the Institute out of the 618 Fellows and 993 Associates should subscribe to the funds of the Society.

Mr. H. L. Florence moved, and Mr. J. T. Christopher seconded, that the Council for the year of office 1900–01 should be elected as follows:—President, the President of the Royal Institute of British Architects; Mr. R. St. A. Roumieu, Mr. W. Woodward, Mr. E. B. l'Anson, Mr. E. H. Martineau, Mr. E. T. Hall, Mr. T. M. Rickman, Mr. R. A. Briggs, Mr. Arthur Cates, Mr. E. A. Gruning, Mr. G. T. Hine, Mr. Zeph. King, Mr. H. C. Boyes, Mr. G. Inskipp, and Mr. J. T. Wimperis.

This was agreed to.

A cordial vote of thanks having been passed to Mr. W. Hilton Nash and Mr. Percivall Currey for their services respectively as Hon. Treasurer and Hon. Secretary, both gentlemen were re-elected for the ensuing year.

Mr. J. T. Christopher and Mr. Percy Hunter were elected auditors.

A vote of thanks to the Royal Institute, for office accommodation, and to the Chairman brought the proceedings to a close.

External Staircase, Town Hall, Perugia.

Mr. John Hebb [*F.*] writes:—

It is satisfactory to note that the question of the rebuilding of the external staircase to the Town Hall at Perugia has, after a discussion extending over several years, been at length disposed of in a manner which appears to meet with general approval.

The Town Hall has been thoroughly restored, as may be seen by comparing the photograph of the exterior on page 527 in the last volume of the Journal with the photograph of a drawing of the north front, by Mr. R. Phenè Spiers, on page 526; but the external staircase on the north side, erected by the architect to the city in 1832, and said to be on the lines of a more ancient staircase, remained intact until a few years ago, when it was pulled down. The municipality was desirous of replacing this staircase by a new staircase with a double ramp, but this was resisted by the Reunione Artistica, of which Doctor Alessandro Belucci is a member, and whose erudite study of the question of the staircase was reviewed in the last volume of the Journal, pp. 524–5.

The Minister of Public Education, Professor Bacelli, on the report of a Commission appointed for the purpose, has adopted the type of an open staircase (*una scala poligonale a libera discesa*), as advocated by Dr. Belucci, in his pamphlet, and in forwarding this resolution to the Mayor the Minister cordially thanked the President and other members of the Reunione Artistica for the interest they had taken in the matter.

LEGAL.

Architects' Charges—The Institute Schedule.

WHIPHAM *v.* EVERITT.

This case, reported in *The Times* of 22nd March, was heard by Mr. Justice Kennedy in the Queen's Bench Division on the 20th March. The plaintiff, Mr. E. A. Whipham, was an architect practising at Stockton. The action was brought to recover £169 16*s*. for professional services rendered and work done for the defendant in con-

nection with the preparation of plans, elevations, sections, and specifications, and obtaining a tender for building a villa at Saltburn. The amount of the tender was £5,660. The defendant considered this sum too high, and, in consequence, the building was not proceeded with. The sum claimed by the plaintiff was 3 per cent. of the amount of the tender, and he said that his charges were fair and reasonable and in accordance with Rule 5 of the Schedule of Charges prepared and issued by the Royal Institute of British Architects, which was as follows:—"If the architect should have drawn out the approved design, with plans, elevations, sections, and specifications, the charge is 2 per cent. upon the estimated cost. If he should have procured tenders in accordance with the instructions of his employer, the charge is ½ per cent. in addition." The defence was that the plaintiff had verbally agreed that if the defendant decided not to build he would charge only for the time occupied in preparing the plans and obtaining the tender; and that the sum claimed was excessive and unreasonable. The defendant had before action tendered to the plaintiff £75, which sum he paid into Court. Mr. E. A. Gruning, Vice-President of the Institute, was called as a witness in support of the plaintiff's claim. On behalf of the defendant two architects gave evidence to the effect that the scale of charges issued by the Institute was not universally adopted in the profession, and that for the work done by the plaintiff £75 was a reasonable sum to pay.

Mr. H. F. Manisty appeared for the plaintiff; Mr. J. Roskill for the defendant.

Mr. Justice Kennedy held that there had been no such verbal agreement as was alleged by the defendant. The plaintiff was entitled to a reasonable remuneration for the work done. The rule of the Institute as to charges was not binding in law, because it was not a custom of so universal an application as to be an implied term of every contract. But in considering what was a reasonable charge, it was right to take into consideration the practice adopted by the large proportion of the profession, as shown by the rules drawn up by the Council of the Institute for the guidance of the members of the profession. One of the witnesses for the defendant had himself admitted that Rule 5 ought to apply to such a case as this, but for the fact that the plans were, the witness said, defective. There had never been any suggestion before that the plans were incomplete, and his Lordship was of opinion that there was no ground for that suggestion. His Lordship thought that the plaintiff was entitled to 2½ per cent. of the "estimated cost" of the building. The word "estimated" gave rise to a little difficulty, but as the plaintiff himself had admitted that the amount of the tender, £5,660, was rather high, the learned Judge thought that if he gave the plaintiff 2½ per cent. on £5,000, that would be a reasonable remuneration. His Lordship also deducted the 4 per cent. claimed for obtaining a tender, because the plaintiff himself had not charged that in the first instance, and, further, it was doubtful whether the plaintiff had obtained a tender within the meaning of the rule. There would be judgment for the plaintiff for £125 with costs.

MINUTES. X.

At a Special General Meeting, held Monday, 19th March 1900, at 8 p.m., Mr. William Emerson, *President*, in the Chair, with 31 Fellows (including 9 members of the Council), 34 Associates, 3 Hon. Associates, and a few visitors, the Minutes of the Special General Meeting (Alterations in By-laws) held Monday, 5th March [*ante*, p. 208], were taken as read and signed as correct.

The Chairman, having announced that the Meeting was called, as required by Clause 33 of the Charter, to confirm the resolutions respecting changes in By-laws 25, 29, and 30 passed at the Special General Meeting of the 5th March 1900, moved, and it was thereupon

RESOLVED, *nem. con.*, That this Meeting do confirm the following Resolutions passed at the Special General Meeting of the 5th March 1900—viz.

That in By-law 25 the words "thirty-six" in the first line be altered to "thirty-eight," and that the word "two" in the second line of section (*a*) be altered to "four."

That in By-law 29 the second sentence be altered so as to read, "Any Associate shall be eligible to serve as an Associate-Member of Council."

That in By-law 30 the word "three" in the seventh line be altered to "six;" and further that the words "but the names of members of the existing Council shall be distinguished by an asterisk" be omitted from the same By-law.

The Chairman having stated that the Council would take steps to obtain the sanction of the Privy Council to the changes in the By-laws indicated in the resolutions thus confirmed, the Special Meeting terminated.

At the Tenth General Meeting (Ordinary) of the Session 1899–1900, held at the conclusion of the Meeting above minuted, and similarly constituted, the Minutes of the Special (Royal Gold Medal) and Business Meetings held Monday, 5th March 1900 [*ante*, p. 208], were taken as read and signed as correct.

The following Associates attending for the first time since their election were formally admitted and signed the Register, viz.—Frank Foster, Thomas Anderson Moodie, and Herbert Henry Dunstall.

Papers on REFORM IN THE LAW RELATING TO ANCIENT LIGHTS having been read by Messrs. J. Fletcher Moulton, Q.C., M.P., F.R.S. [*H.A.*], J. Douglass Mathews [*F.*], and Beresford Pite [*F.*], a vote of thanks was passed to the authors by acclamation, and the discussion was adjourned to Monday, 9th April.

Mr. C. H. Brodie [*A.*] having given notice that, on behalf of the Practice Standing Committee, he would bring forward at the adjourned Meeting a resolution in connection with the subject of the Papers, the proceedings closed, and the Meeting separated at 10.30 p.m.

THE LATE WILLIAM BUTTERFIELD, F.S.A.

IT is no empty patriotic boast to assert that in this country alone has the revived practice of mediæval architecture brought forth exponents, few though they be, who have probed its mysteries, mastered its spirit, and founded upon it individual and living types. In France the erudite efforts of Viollet-le-Duc did no more than galvanise a corpse, while in Germany a too exclusively technical training upon the one hand has striven with an inheritance of weak sentimentalism upon the other, and between them produced a mere mechanical travesty of the ancient manner. In America, following in the main modern French architectural tradition, revived Gothic has taken no hold, and brave efforts to work in the style, as for instance the costly marble cathedral of S. Patrick at New York, show neither appreciation nor accurate scholarship, and but very little imagination.

We need not seek far for the cause. The wave of romanticism in literature which preceded the mediæval revival was widespread, but alone in this country was a religious enthusiasm awakened, which, in its reaction from Puritanism and whitewash, carried men's minds back enthusiastically to Catholic tradition and Catholic art, and accomplished what was beyond the scope of a merely antiquarian fervour.

Let Butterfield speak for himself, in some rough notes written in the third person which he has left behind, of the part he took in this movement and his views respecting it.* "Mr. Butterfield's choice of a vocation in life was made before any accurate and detailed study of church architecture had been made. There were then in fact no practising church architects of any repute except Pugin, who was beginning work. Rickman's catalogued examination of English churches was a useful pioneer—no more. His own mind however was strongly inclined for work of that character. At the close of his articles, he spent a considerable time in laboriously visiting old buildings and specially churches throughout many parts of England. In their then neglected condition they were in many ways far more interesting and instructive for purposes of examination than they can ever be again. But few living persons can at all realise the appearance they then everywhere presented. Many a valuable tradition has been very needlessly since destroyed. This method of working led naturally to a very warm sympathy and intercourse with the Cambridge Camden Society which was then coming vigorously into existence. With many of its founders he formed friendships of an intimate and enduring character which moulded his professional practice and eminently suited his own special temperament.

"It was a very singular moment. The Ecclesiastical revival, both in theology and in its architectural expression, was then just beginning. Members of the two Universities were

* These notes are prefaced by the characteristic statement: "In the event of any professional facts being inquired after by any qualified persons (which is unlikely), such notes as these may prevent mistakes."

working for the same end in their different ways, and quite independently of each other. The *Ecclesiologist* was the mouthpiece of the Cambridge Camden Society and did very able work. A remarkable instinct combined with good sense and other gifts, quietly exercised by this society, made their work an eminently useful one, in asserting principles and restraining the ill-instructed private taste and judgment which have since often displayed themselves to excess, and which the excitable spirit of the day has naturally favoured."

Born in Gordon Square, London, in the year before Waterloo, Butterfield was thus one of the protagonists of the English revival, which has flowed and ebbed in this century now expiring, and left an inextinguishable influence upon the history and practice of architecture in this country. Unlike his contemporary Pearson, who was cut off, despite his advanced age, in the full vigour of his strongest work, Butterfield had lived beyond his long years of activity, and took a grim interest in seeing himself described from time to time as of another age and world.

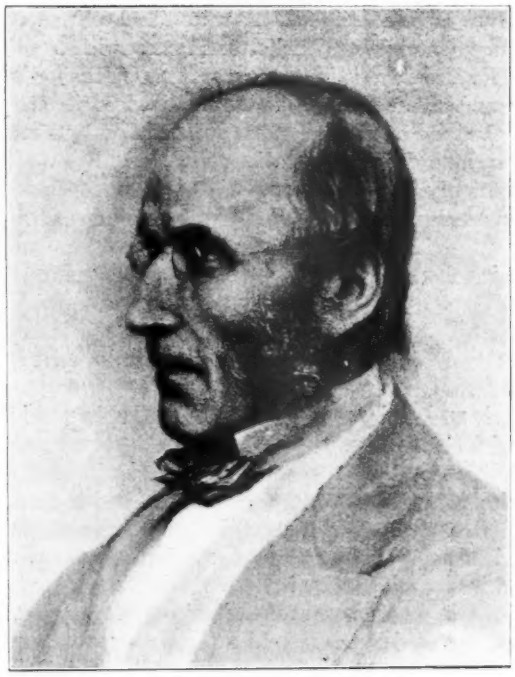
Latterly, it is true that he lived in the past and railed at the present as an age of degeneracy in which he saw no light and for which, certainly as regards architecture, he had no hope but the exiguous one of handing down those traditions of practical utility which he had by sustained effort established for his own use, and believed in with all the fervour of his strong nature. It was his evident pleasure, and indeed no vain boast, to quote the words addressed to him by an eminent ecclesiastic : "I can preach in your pulpit, I can read at your lectern, I can pray at your desk, I can baptize at your font, I can serve in your sanctuary, my people can worship reverently in your seats." His strength lay in his infinite capacity for taking pains over matters of detail. Into his inferences from ancient work he read his own views of what was right and reasonable for modern use, and thus the surprising statement, which he once made to the writer, that there was an historical precedent for every feature of his work, can be perhaps in some measure comprehended. His early studies were most interesting. He made careful geometrical drawings of ancient detail in pencil, accurately figured, and these were frequently inked-in afterwards with a fine and firm line, freely drawn. His observation covered a wide field, every kind of detail being represented, and it is not a little curious that there were many excellent studies of late Perpendicular woodwork, with which he showed no sympathy in his own production. His sketch-books have unfortunately been recently destroyed. It must not be forgotten that these studies were his only text-book in early days. His drawings and designs were never signed or dated, and there is some difficulty in tracing the dates of his various works.

Butterfield's reputation has suffered from his qualities. An intense individuality pervaded all that he touched. He believed in his mission and knew no hesitancy. His early connection with the Camden Society and the early heresies and extravagancies of the wanton era of "Restoration," caused to pass under his hand many ancient fabrics upon which he set his mark, and left in the main nothing else, being one of the foremost instruments in the destruction he laments in the above quotation. We are wrapt in wonder that he could appreciate so much and spare so little. He despised the insipid and empty renovations of Scott, he was altogether blind to the tender and scholarly respect and the delicate abstention of Pearson, and it is perhaps not surprising that the many, whose shallow sense of sentimental respect for ecclesiastical antiquity overrides their grasp of genuine architectural production, appraise the man by the failures which were inherent to his very instincts, and judge his creations by the relentless destruction he wrought upon many cherished monuments. We can regret for our own sake and for his reputation's that he was ever called in to deal with a single ancient fabric, but let us not confuse issues. Butterfield was essentially a creator, and when most of the paltry work of the revived Gothic, typified by the churches of West-end

London squares, has passed out of history as unworthy of aught but scorn, Butterfield's best efforts will remain, full of vigour, strength, and virility, types of a strong soul—a master of his craft.

Some of his earlier designs, it is true, exhibit little promise—witness the library of S. Bees College—but his advance was rapid and decided, although it must be remarked that he was, from his very nature, but little influenced by the phases of revivalism which played upon men of less strenuous expression.

In his early manner, as at S. Matthias, Stoke Newington (1853), and the College of S. Augustine at Canterbury (1850), he allows himself to be curbed by his studies then fresh upon



WILLIAM BUTTERFIELD
From a drawing by the late Dowager Lady Coleridge.

him, and maintains a quiet simplicity. It is probably at All Saints, Margaret Street (1858), his individuality first finds itself, thereafter to develop, sometimes into almost riotous expression. This fine effort undoubtedly brought him to the forefront among his fellows, and indeed possesses so much that is noble, fresh, and dignified, that one is almost oblivious of the lack of fine taste in colour, which, in the interior, disfigures its windows and sprawls over its walls in restless and worrying profusion. To step from the neighbouring busy streets into its cleverly composed courtyard is to enter at once into a sense of the dignified rest of the mediæval cloister. This is a masterly attainment, the like of which few other modern architects can set to their credit, and it is not surprising that Ruskin himself accorded the building his warm approval, but based upon it hopes for architectural development which were destined to remain unfulfilled.

Butterfield was fond of asserting (in private conversation) his mission to give dignity to brick, and there is no doubt that the world of his day was ignorant or oblivious of the fine examples of early brick architecture extant in this country, in North Germany and Scandinavia.

His next important effort was at S. Alban's, Holborn (1862), an edifice whose dignity of proportion both inside and out must ever testify for him. The unique treatment of the saddleback tower—a form which he affected and sometimes imposed without any hint of justification upon ancient churches, as at Brigham, Cumberland—is almost brilliant, failing only to give complete satisfaction by the apparent weakness of substance upon either side of the window arches. Rugby chapel (1875) is not so satisfactory, and yet possesses most striking proportions internally. Here he retained the traditional collegiate plan, but at Keble and in the disastrous rearrangement of the Winchester chapels, with a wilfulness all his own and with great loss of effect, he discarded it in favour of that of the ordinary church. In these works his individuality and unfortunate lack of sensitiveness in colour design were rapidly gaining ground, and reached the extreme of vagary and restlessness in that by which his name will probably best be known to future generations—Keble College. It may be said with no little truth that Keble can only be properly appreciated upon a foggy day or in a photograph, and it was something of a test of self-control to hear its author assert that one of his chief objections to permitting the illustration of his work in the professional journals was the necessary absence of their colour scheme upon which he set so much store.

The proportions of the exterior of Keble chapel leave little to be desired, and it is not to be denied that the whole building has a quality of intense earnestness and vigour which will become more recognised as Nature's paint-brush, aided by Oxford smoke, modifies its superficial extravagances.

The chapel interior is racked by restlessness, and probably nothing but whitewash would exhibit its full dignity of design. It must remain for ever a mystery how a man of cultured eye could allow his buildings, over which—as over Keble—he had full control, to be disfigured by the amazing vulgarities in stained glass which he seemed to favour. It is interesting to compare the chapel at Keble with that of Exeter, both of them notable examples of developed nineteenth-century revivalism by acknowledged masters. In one a nightmare of colour obscures noble qualities, in the other there is little quality for colour to obscure.

In passing from Keble it should be stated in justice to Mr. Butterfield's memory that he had no hand in the unsympathetic and insipid alterations recently perpetrated. This work was executed not only without Mr. Butterfield's sanction but in the face of his protest.

The collegiate church—now the cathedral—of Cumbrae and the chapel of Balliol, Oxford (1858), are both works in Butterfield's earlier and more restrained manner which will well repay study. This is not a catalogue of his works, and to refer in any detail to his wide range of practice would be impossible in a short notice, but no reference to his life's work would be complete which did not recall his activities at Melbourne, Adelaide, Bombay, Poonah, Capetown, Port Elizabeth, Madagascar, and Perth, mostly in cathedral work. It cannot be said, however, that any of these rise to the level of his best efforts. As regards the cathedral at Melbourne, in further justice to him it must be recorded that it is his so far only as the masonry of the walls is concerned. Jealousies and difficulties raised by persons on the spot, who desired that a local architect should be employed, led to Mr. Butterfield's resignation. A disastrous and ignorant treatment of the finishings and fittings of the interior was the natural result.

Of provincial churches that at Rugby, where the spire was only completed in 1896, and was his last considerable work, is the most important and most striking. His genius

ALL SAINTS' CHURCH, MARGARET STREET (1859).

cannot be said to have lain in the successful and appropriate treatment of country architecture.

We illustrate an example of his later manner, the priory chapel at Ascot (1885), in which the very distinctive design of the east wall is to be remarked. The whole forms a characteristic and effective interior, although the exterior is at once harsh, coarse and uninteresting.

But he can never be said to have grasped, perhaps he never appreciated, many of the refinements of mediæval constructional methods, specially in masonry, one reason no doubt of the measure he meted out to those ancient buildings which passed under his heavy hand.

The collegiate chapels of Winchester and the chapel of S. Cross Hospital are well-known examples of his unrestrained daring. Even more characteristic, but disastrous, is the highly interesting church at St. Bees. Here he erected new aisles—a new east wall and a new central tower having no relation to the original or the well-marked local character. But his relentlessness is chiefly exhibited in the appalling iron screen erected in 1885 at great cost, and decked out in vivid colours, which grows from the floor throughout the whole height of the lofty chancel arch and imprisons an already too-confined choir.

At Friskney, Lincs, he would have swept away the fine screenwork merely because it interfered with his scheme, and he erected a would-be Perpendicular aisle which exhibits his want of sympathy and scholarship in dealing with the later developments of English Gothic. His lack of appreciation of the finest English schools of woodwork is indeed most marked. Like the thirteenth-century builders themselves he seems never to have grasped the intrinsic differences between wood and stone. With all their strange and often uncouth outlines, however, the intense care and thought which he bestowed upon practical considerations in connection with church fittings and his thorough knowledge of church plate demand the fullest recognition, and a study of his methods may be commended more especially to the many architects in these days who mingle a little church work with a general practice, as well as to the less thoughtful of the clergy who are ready to accept anything with the passport of a pointed arch or a quatrefoil.

Butterfield was engaged upon many important scholastic and hospital, and not a few domestic works, which exhibit his vigour and are remarkable in the clever application of features derived from ecclesiastical antiquity in new, generally logical, and often striking combinations. Heath's Court (1883), the seat of Lord Coleridge, near Ottery S. Mary, and Milton Ernest, an earlier example, near Bedford, are cases in point, but perhaps the Hants County Hospital at Winchester (1868) is one of the most remarkable. But his interiors were barren and generally devoid of interest, and it cannot be said that he ever apprehended those refinements of planning which make for restfulness and comfort to body and mind in daily use. His care, however, descended to his least significant domestic work, and he was probably the only architect who ever insisted upon having his chimney flues set up to full size throughout their whole height and upon personally correcting their lines. He was fond of recording how a lady client once complained to him of a trivial defect in a mansion he had built for her:

"Madam," he replied, "have you nothing more to say?"

The lady thought not.

"You have not complained to me, madam, about your smoky chimneys."

"But they do not smoke."

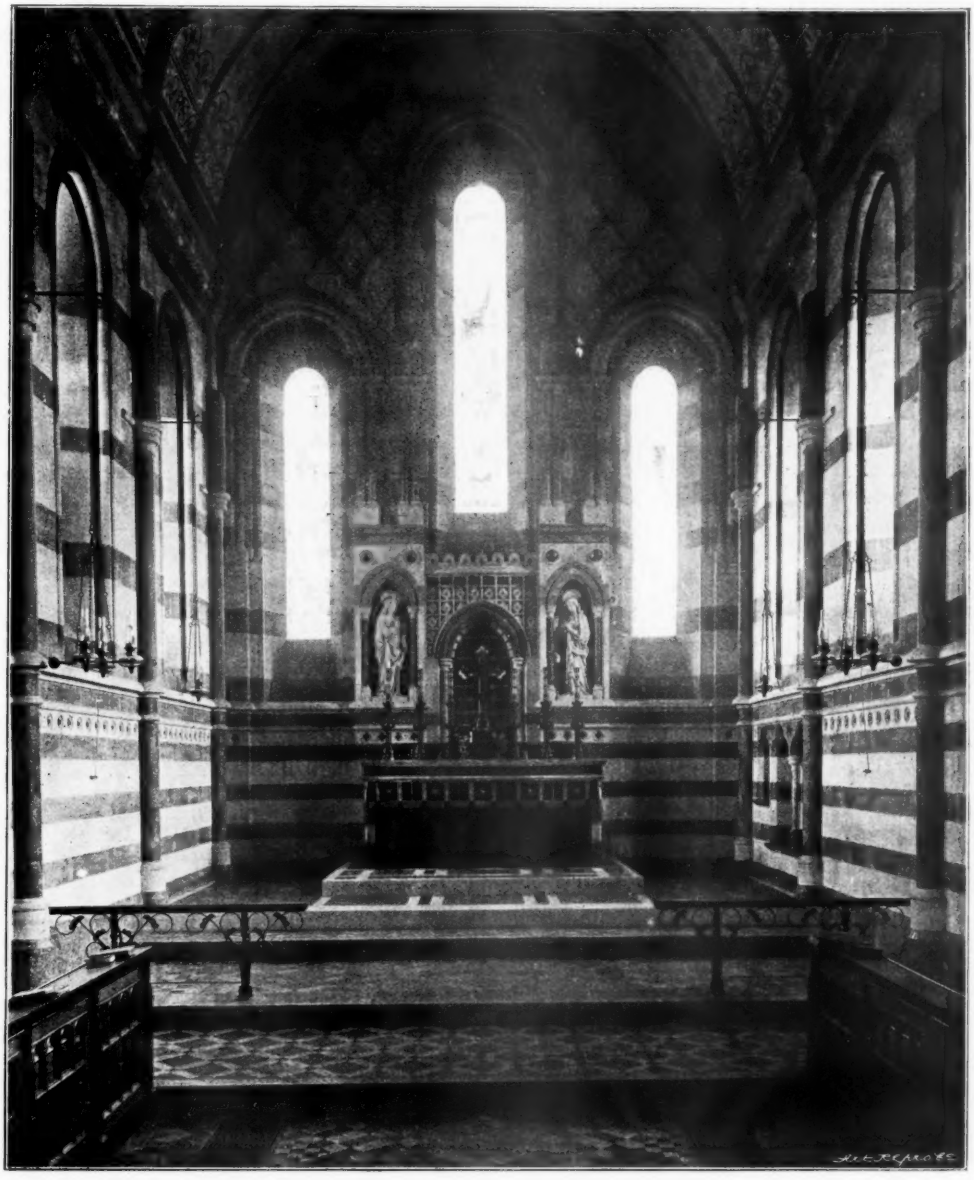
"And you have not thanked me for the boon?"

One can picture the man and the scene. It reads like an extract from a page of Meredith.

But let not posterity inquire too curiously! There be some things which baffle our best efforts.

Mr. Butterfield's descriptions of the country churches of England as he first studied them

were as fascinating as distressing in the suggestion of the penalty of loss which has been paid for revivalism. One could not but remark the shrewd deductions he drew from his



INTERIOR OF THE CHAPEL, ASCOT PRIORY (1885).

observations, as for instance the significant placing of the side porch at the western bay of the aisle of many of the great Perpendicular churches of East Anglia, his careful diagnosis of

the relative heights of towers and their relation to the buildings to which they belonged, and other kindred subjects. He refused, however, to make public his studies and conclusions otherwise than in his executed works, "living," to use his own words, "as quiet and retired a life as is consistent with my public work." He coupled a strong sense of the dignity of his calling with a wholesome horror of self-advertisement, which gave him and may well give us pause, in these degenerate days, in which he lived to see his profession degraded by the unabashed placarding of architects' names in our streets, and the intolerable practice defended—even sometimes in high places—upon the plausible but spurious grounds of public convenience or professional and private interest.

The methods of production adopted by Butterfield were laborious. Whatever his custom in earlier years, latterly his method was to revise again and again the draughtsmanship of his assistants. He knew what he wanted and did not rest until the effect he aimed at had been produced. The present writer was more than once solemnly rebuked by him for the "grave error and waste of effort" in making his own original scale drawings!

And here let it be known that eminent French architects, naturally unsympathetic with English Gothic expression or Gothic of any kind, recognise in Butterfield's work that quality of *étude* which constitutes the hall-mark of modern French design, and give it their warm admiration. Butterfield's *études* moreover were, apart from his woodwork, based upon the proper constructional qualities of the material with which he was dealing, and he never fell into the weakness of the French school, which is apt to despise material and content itself with *étude*, bordering sometimes upon emasculation.

Although so divergent in individual expression it is possible to class together the three greatest masters of the revival, Pearson, Mr. Bodley, and Butterfield, in this fine quality of *étude*, and to differentiate from them three other equally distinguished masters of the same school, Pugin, Scott, and Street, in whose works it seems so often to seek.

Pearson, Ruskin, Butterfield, all intensely different in sympathies, imagination and influence, have recently passed in quick succession to the bourne. Who shall say that their best is not part of the English heritage, by which three strides have been taken onwards towards the final achievement?